

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

<b>Key for how comments and responses are presented</b>
<b>Commenter name -- organization or individual who submitted the comment</b>
<b>Comment category -- grouping of similar comments within a category</b>
<b>Response ID -- unique identifier for each summary response, e.g., AP-1 is the 1st comment within the Application for Coverage (AP) comment category.</b>
<b>Summary comment -- summary based on the individual comments received</b>
Summary response -- State Water Board response developed for the summary comment
Document reference -- response developed using text referenced from the Cannabis Policy, Staff Report, General Order, and/or Attachment A.
<b>Comment ID -- unique identifier for each comment. Consists of comment letter number and comment number, e.g., 012.005 is the 5th comment within comment letter #12.</b>
Individual comment text -- text of specific comment provided by the commenter

**Agriservice, Inc.**

**Constituents of concern (CC)**

**CC-03**

**Summary comment: I don't understand what you're looking for in a nitrogen management plan. One of the issues with this crop is that there hasn't been a lot of university research done so tying it together and coming up with a comprehensive plan that is beneficial to the environment would be really important. END**

Summary response: Attachment D includes a technical report guidance for preparation of a Nitrogen Management Plan. The plan is only required for Tier 2 facilities with a cultivation area greater than one acre. Potting soil, soil amendments, and fertilizers contain excess nitrogen. Nitrogen is a primary plant nutrient that is taken up by plants as nitrate or ammonium ions. Nitrate is mobile in the environment and can move with soil water to plant roots where uptake can occur; ammonium nitrogen is sorbed to soil particles and has limited mobility in the environment. All forms of nitrogen can be converted to nitrate, by microbial activity, under the proper conditions (e.g., temperature, aeration, moisture, etc.). Nitrogen or nitrogen compounds may be lost to the atmosphere by the process of denitrification or by ammonia volatilization. Nitrate may be leached below the root zone by percolation. Erosion of nitrogen containing materials may transport nitrogen containing materials to surface water. Symptoms of nitrogen deficiency in plants include slow growth, yellow green color (chlorosis), "firing" of tips and margins of leaves beginning with more mature leaves. The rate of nitrogen uptake by crops changes during the growing season. For planning and nutrient balances, the rate of nitrogen uptake can be approximately correlated to the rate of plant transpiration. Consequently, the pattern of nitrogen uptake is subject to many environmental and management variables and is crop specific. The Policy allows up to 1.4 times the crop uptake rate to compensate for the nitrogen that is not plant available or lost through denitrification or ammonia volatilization, and also allows for short-term additional nitrogen application if needed based on visual observation of the plant and laboratory analysis of plant tissue demonstrating limited nitrogen availability. The factor of 1.4 is designed to address the limited data regarding cannabis nitrogen uptake rates, and the variable nitrogen cycle processes described above. Other Requirements in the Policy provide adequate protection of water quality that substantiates use of the increased application factor (1.4). A 2004 study at the University of Northern British Columbia evaluated nitrogen uptake values for Cannabis sativa (Forrest, 2004). The study reported a nitrogen uptake rate of 228 lbs/acre/year. Using the application factor of 1.4, allows a nitrogen application rate of 319 lbs/acre/year. The application rate includes all sources of nitrogen, including soil amendments, bulk fertilizers, and liquid fertilizers. Because cannabis grown for medical or personal use is not cultivated as densely as hemp, the Policy limits nitrogen application using the units "pounds/canopy acre/year." Typically, one canopy acre occupies more than one acre of land. Using the simpler units "pounds/acre/year" would result in the application of nitrogen beyond the crop need.

END

Cannabis documents referenced: Att A: Sec 2, pg 37, Item 115; pg 70, par 8 and pg 71, par 1.

Order: pg 18, C.1.d. Policy, pg 31, par 5.

**032.002**

Comment text: ...confused by -- or didn't really understand what you're looking for in a nitrogen management plan. One of the issues with this crop is that there hasn't been a lot of university research done. And so tying it together and coming up with a comprehensive plan that is beneficial to the environment I think is -- would be really important. END

**Outreach, public notification (OP)**

**OP-01**

**Summary comment: Outreach was insufficient. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

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Summary response: The State Water Board held or participated in the following meetings during the development of the Cannabis Policy:

- Eight public outreach meetings to solicit comments on Policy development - August 31 - October 4, 2016 (throughout CA)
- Calaveras County Water District Meeting – September 28, 2016 (Andreas)
- Siskiyou County Board of Supervisors Meeting – October 4, 2016 (Yreka)
- North Coast Regional Board Meeting – October 20, 2016 (Santa Rosa)
- North Coast Watersheds Science and Management Exchange Program – February 2, 2017 (Douglas City)
- California Water Action Plan Meeting – February 8, 2017 (Briceland)
- American Fisheries Society Conference – April 7, 2017 (Eureka)
- Mendocino County Permit Meetings – April 19, 2017 (Laytonville and Willits)
- Meetings with Association of California Water Agencies, Northern CA Water Association, Farm Bureau, wine stakeholders, water rights stakeholders – May 25, 2017
- California State Association of Counties, Humboldt County Regional Meeting – June 29, 2017 (Eureka)
- California Department of Food and Agriculture Draft Environmental Impact Report Public Meetings – July 11-20, 2017 (throughout CA)
- CA Growers Association Meetings – July 29, 2016; January 18, 2017; and July 10, 2017 (Sacramento)
- Two Public Information Meetings for Draft Policy and Draft General Order – July 20, 2017 (Eureka) and July 27, 2017 (Sacramento)
- Tribal Consultation with Karuk Tribe – August 1, 2017 (Orleans)
- State Water Board Workshop on Draft Policy and General Order – August 2, 2017 (Sacramento)
- Santa Cruz County State Cannabis Licensing Workshop – September 14, 2017 (Santa Cruz)
- Tribal Consultation with Blue Lake Rancheria, Yurok Tribe, Karuk Tribe, Bear River Band of the Rohnerville Rancheria, Hoopa Valley Tribe, and Wiyot Tribe – September 26, 2017 (Blue Lake)

Meetings held by the State Water Board were noticed in local newspapers some of which include the Press Democrat, Ukiah Daily Journal, Sacramento Bee, Fresno Bee, LA Times, San Francisco Chronicle, Ventura County Star, and Eureka Times Standard. Notices were also sent electronically to anyone who had signed up for the State Water Board's "Cannabis Cultivators" email subscription list as well as the cannabis email lists for the North Coast Regional Water Board and the Central Valley Regional Water Board. State Water Board staff also participated in radio broadcasts and mailed the Notice of Public Hearing to all enrollees and applicants for coverage under the North Coast Regional Water Board and Central Valley Regional Water Board cannabis general orders..

At meetings, State Water Board staff informed the public of the State Water Board's efforts related to cannabis cultivation. Staff consistently solicited information and input from any interested parties, especially those that were involved in cannabis cultivation.

END

Cannabis documents referenced:

#### 032.003

Comment text: And there haven't been any other workshops, really anyplace in Southern California. And I don't know about you guys, but getting from San Diego to Eureka is quite a challenge for a two-hour meeting. END

### Site-specific WDRs, ILRP (WD)

#### WD-01

**Summary comment: Commenters questioned why the cannabis program isn't aligned with the Irrigated Lands Regulatory Program (ILRP) asserting it is consistent with traditional agricultural practices and is irrigation intensive. END**

Summary response: The California Legislature (Water Code section 13149) directed the State Water Board to develop principles and guidelines specifically to address cannabis cultivation activities. In addition, the Legislature (Water Code section 13276(b)) directed the Regional Water Boards, and authorized the State Water Board, to address a minimum of 12 types of waste discharges associated with cannabis cultivation. Because the combination of waste types is unique to cannabis cultivation, addressing the issues in a cannabis-specific regulatory program is more sensible than expanding the requirements of the ILRP to include cannabis cultivation. END

Cannabis documents referenced:

#### 032.001

Comment text: Some of the questions that I have is like this interface between the irrigated lands and why this is completely separated out from traditional agriculture and not included in the irrigated lands group. END

### Anonymous, unknown author

#### Flow requirements, narrative (FR)

#### FR-09

**Summary comment: Will cannabis cultivators diverting pursuant to pre-1914 water rights be subject to the forbearance? END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Summary response: Yes. All water that is being diverted for cannabis cultivation will be subject to the forbearance period, regardless of the basis of right. END

Cannabis documents referenced:

**070.001**

Comment text: Pre-1914 rights - Will he or she landowner be subject to the forbearance ? END

**Avila, Karla**

**Application for coverage (AP)**

**AP-04**

**Summary comment: Sites under 2,000 square feet should not be required to register or enroll in the Cannabis General Order. END**

Summary response: The commenter does not state why sites under 2,000 square feet should not be required to register or enroll. However, the potential water quality degradation from small sites, especially those that are not required to comply with the best practicable treatment or control measures can be significant. Therefore, it is appropriate for such sites to be required to comply with the Cannabis Policy and General Order. Furthermore, all commercial cultivation activities (commodities that are destined for the medical or recreational marketplace) are required to register or enroll under the Cannabis General Order. Compliance with the Cannabis General Order is required for a cultivator to obtain a CDFA cultivation license. For non-commercial activities, the Cannabis General Order provides personal use exemptions for medical or recreational cultivation activities. Sites that have a total disturbed area under 1,000 square feet and qualify for a personal use exemption are not required to register or enroll under the Cannabis General Order. A change was not made in response to the comment. END

Cannabis documents referenced: Policy: pg 13, par 3, 5; Policy: pg 14, par 8; Policy: pg 15, par 8; Policy: pg 18, par 2-3; Order: pg 2, F7.a; Order: pg 3, F7.c; Order: pg 4, F10, 12; Order: pg 5, F13; Order: pg 12, F41.a; Order: pg 13, F41.d

**036.007**

Comment text: I propose that the smallest of farmers, Type 1C cottage 25 outdoor, be exempt from the majority of this proposed new order. Or that you change it to be more like the North Coast Regional Order. END

**AP-11**

**Summary comment: Cottage farmers should be exempt from regulations if they implement best management practices. END**

Summary response: The commenter does not state why cottage farmers should not be required to register or enroll. Type 1c Specialty Cottage sites can include up to 25 mature plants – significantly more than the 6 plants allowed under the personal use exemption. The potential water quality degradation from 1 sites this size, especially those that are not required to comply with the best practicable treatment or control measures can be significant. Therefore, it is appropriate for such sites to be required to comply with the Cannabis Policy and General Order. Furthermore, all commercial cultivation activities (commodities that are destined for the medical or recreational marketplace) are required to register or enroll under the Cannabis General Order. Compliance with the Cannabis General Order is required for a cultivator to obtain a CDFA cultivation license. For non-commercial activities, the Cannabis General Order provides personal use exemptions for medical or recreational cultivation activities. Sites that have a total disturbed area under 1,000 square feet and qualify for a personal use exemption are not required to register or enroll under the Cannabis General Order. All cannabis cultivators, including those that qualify for the personal use exemption, are required to comply with the BPTC measures contained in the Cannabis Policy Attachment A. A change was not made in response to the comment. END

Cannabis documents referenced: Policy: pg 13, par 3, 5; Policy: pg 14, par 8; Policy: pg 15, par 8; Policy: pg 18, par 2-3; Order: pg 2, F7.a; Order: pg 3, F7.c; Order: pg 4, F10, 12; Order: pg 5, F13; Order: pg 12, F41.a; Order: pg 13, F41.d

**036.001**

Comment text: There are several factors that will make the proposed regulations a significantly detrimental barrier to entry for the vast majority of our region's small farmers, especially the smallest commercial farmers Type 1 and particularly Specialty Cottage 1c who cultivate only 25 plants per year, and utilize less water for irrigation than most rural households do for basic domestic uses. Typically well under 100,000 gallons per year, often more in the range of 25,000-70,000 gallons annually are utilized by a Type 1c farm. Why is there also no consideration for the fact that these small farms utilize a very small amount of external inputs that have the potential to runoff as compared to large farms. A cottage farmer operating under the BMPs of the current North Coast Regional Order can demonstrate that they utilize less water and less fertilizers/nutrients or external inputs than most rural households use for domestic purposes alone, and in an amount that is so minuscule it is questionable whether or not they should be required to pay fees at all, much less be required to follow the same level of regulatory requirements as a large commercial operation. END

**AP-12**

**Summary comment: Areas used for cultivation of food for personal consumption that are on the same property as the cannabis cultivation should not be considered part of the total cultivation area. END**

Summary response: The Cannabis Policy and Cannabis General Order regulate cannabis cultivation activities and other activities associated with cannabis cultivation. Cultivation of food for personal consumption is not regulated under the Cannabis Policy or the Cannabis General Order and therefore are not considered to be part of the cannabis cultivation area. END

Cannabis documents referenced: Att A: Overview, pg 3, Item 4; Policy: Att B, pg 1, par 8; Staff rpt: App 3, pg 1, par 8

**036.008**

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Updated: 10/13/2017

Comment text: I would also highly recommend that both the North Coast Order and the statewide Order be changed to allow food for personal consumption being cultivated on the same property should NOT be considered part of the total cultivation area for which we have to pay fees. It is highly punitive to have to pay fees to grow your own food not for commercial purposes. And, please make sure that the Order paperwork can be completed in its entirety by the farmer himself without the need to hire specialized individuals to complete our paperwork. END

#### AP-13

**Summary comment: The reduction of slope allowance from 35 percent to 25 percent is strongly opposed. END**

*Summary response: It is unclear what the commenter is discussing with the slope values of 35 or 25 percent. Those values do not exist in the Cannabis Policy and General Order. The Cannabis General Order establishes a 30 percent slope as the criteria for a moderate risk site. The 30 percent value is consistent with the Forest Practice Rules which establish watercourse and lake protection zone setbacks based on slopes less than 30 percent, from 30 percent to 50 percent, and greater than 50 percent. Cultivators disturbing land on a slope greater than 30 percent (and less than 50 percent) are required to submit a technical report describing BPTC methods to prevent or minimize sediment discharges to surface water. This is an appropriate requirement because many surface water bodies in the state have been affected by sediment discharges associated with land disturbance on slopes greater than 30 percent. END*

*Cannabis documents referenced: Order: pg 9, F. 30-38. Order: pg 12, F. 40. Order pg 16, F. B.2.c.*

**036.005**

Comment text: I am strongly opposed to ...reduction of slope allowance from 35% to 25%, END

#### AP-14

**Summary comment: The removal of the 5-year timeline provided by the North Coast Regional Water Board Conditional Waiver of WDRs is strongly opposed. The timeline is critical to allow farmers adequate time to comply with the requirements. END**

*Summary response: The Cannabis General Order requires applicants that will not be able to comply with Order requirements by November 15 of each year to submit a schedule for complying to the Regional Water Board. For any previously-established and agree-upon compliance schedules for applicants in the North Coast or Central Valley Regional Water Boards, the Regional Water Boards will likely maintain the same compliance schedule. Additionally, applicants that are currently enrolled in the North Coast Regional Water Board's Conditional Waiver of WDRs or the Central Valley Regional Water Board's General WDRs will not be required to enroll under the Cannabis General Order until July 2019. END*

*Cannabis documents referenced: Policy: pg 17, par 2; Att A: Sec 1, pg 15, Item 31; Staff rpt: pg 72, par 3; Order: pg 14, F42.a; Order: pg 21, C.3.a; Order: Att D, pg D-3, Item 5.4; Order: Att D, pg D-4, par 2; Order: Att D, pg D-9, par 2; Order: Att D, pg D-10, Item 6.1*

**036.006**

Comment text: I am strongly opposed to ...the removal of the 5-year window provided by the North Coast Order, which is I believe absolutely critical in granting farmers entry and a reasonable amount of time to be able to remediate an entire property. END

#### Flow requirements, narrative (FR)

##### FR-01

**Summary comment: The Policy should implement a grace period to allow for the installation of storage facilities END**

*Summary response: The Policy has been updated to provide a waiver of the 2018 surface water dry season forbearance period (April 1, 2018 through October 31, 2018), with certain conditions, so that cannabis cultivators may divert during this period in a manner consistent with their water right or claim of right. Cultivators that make use of this waiver are required to: file for a Cannabis Small Irrigation Use Registration (SIUR) or submit an application for an appropriate water right permit to prepare for potential curtailment during the dry season of 2018 (triggered by Aquatic Base Flow Numeric Instream Flow Requirement); and install storage as soon as possible after storage has been authorized following the conclusion of the winter period. All water must be diverted under a valid basis of right and all cannabis cultivators will be subject to the aquatic base flow requirements put forth in the Policy. Further, all storage shall be installed in accordance with the Policy and General Order, which include requirements to protect water quality and beneficial uses, including plan development and approval prior to land disturbance, implementation of best practicable treatment controls, and no work during the winter period. END*

*Cannabis documents referenced:*

**036.003**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: I am also greatly alarmed by the requirement for complete forbearance from surface water diversions without any timeframe given for completion of compliance, such as the 5 years given by our North Coast Region's Order that allows farmers an appropriate amount of time to remediate any issues and come into full compliance without undue financial hardship that would result in many small farmers no longer being able to participate at all. END

#### Grandfather coverage (GR)

##### GR-01

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*  
END

*Cannabis documents referenced:*

##### 036.002

Comment text: we should continue with our own regional order for at minimum its intended 5 year duration...

I believe the proposed regulations would only work for the largest of farms, those cultivating Type 3 licenses only. Those of us with Type 1 licenses, and I believe also many with Type 2, will suffer greatly from these proposed changes or will not be able to participate in the program at all due to exorbitant costs or inability to move their garden site to the new required setback distances. I believe these requirements are severe and excessive, and I don't believe these requirements are necessary in order for a small farm such as a cottage Type 1c farm to be able to demonstrate no negative environmental impacts. The Best Management Practices and regulations of the North Coast Region's Order are excellently written, were thoroughly developed, and work for small farmers in our region. We should be able to remain under the North Coast Order, for at least 5 years as we were originally granted, or we should be grandfathered into the statewide order but only be required to comply with the distances and other further requirements of the North Coast Order. Furthermore, the statewide order should be changed to reflect the North Coast Order for the setback distances and slope requirements, particularly for smaller farmers located in the North Coast Region and who had already been enrolled with our North Coast Regional Order.

At the minimum current enrollees in the North Coast Order should be allowed to continue operating under our Regional order for the 5 years duration that our regional Order was intended. END

#### Setbacks (SB)

##### SB-01

**Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END*

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Cannabis documents referenced:

**036.004**

Comment text: I am strongly opposed to the increases in setback distances from surface water END

#### **Berman-Brady, Benjamin**

##### **Cost of compliance (CS)**

###### **CS-01**

**Summary comment: The proposed requirements are too expensive to implement, especially for smaller farms. END**

*Summary response: The State Water Board's statutory mandate is protection of water quality. However, the State Water Board is aware of the costs of compliance imposed on cultivators and balances the requirements with the need to protect water quality. The cost of compliance is a function of the site specific conditions. Sites located a suitable distance from a water body on relatively level terrain are not required to implement a large number of BPTC measures. Sites located in close proximity to a water body or on a sloped property, are a higher threat to water quality and therefore are subject to additional BPTC measure requirements. Similarly, larger cultivation sites are an inherently higher threat to water quality and have additional requirements imposed upon them. For those facilities that cannot comply with the applicable BPTC measures, a schedule to achieve compliance can be obtained from the Regional Water Board. END*

*Cannabis documents referenced: Policy: pg 13, par 2, Item c; Policy: pg 15, par 4; Order: pg 3, Finding 7.c; Order: pg 5, Finding 13; Policy: pg 17, par 2; Policy: pg 22, par 5; Att A: Sec 1, pg 15, Item 31; Att A: Sec 1, pg 16, Item 36, fn 3; Att A: Sec 5, pg 70, par 6; Staff rpt: pg 71, par 4; Staff rpt: pg 72, par 3; Order: pg 14, Finding 42.a; Order: pg 21, C.3.a; Order: Att D, pg D-3, Item 5.4; Order: Att D, pg D-4, par 2; Order: Att D, pg D-9, par 2; Order: Att D, pg D-10, Item 6.1*

**019.001**

Comment text: The requirements in the proposed SWRCB Cannabis General Order would impose significant additional expenses that could make my continued operation untenable. In many cases, these additional requirements are redundant to water resource protections already contemplated by the NCRWQCB Order. END

#### **Grandfather coverage (GR)**

##### **GR-01**

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

## **Cannabis Cultivation Policy and General Order Response to Public Comments**

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*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*

*END*

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Cannabis documents referenced:

**019.003**

Comment text: It is important to note that while recent state legislation exempts the SWRCB Cannabis General Order from the requirements imposed by the California Environmental Quality Act, the NCRWQCB Order was implemented only after completing a thorough CEQA analysis including Notice and Comment. In light of that environmental review, I believe that the NCRWQCB Order is protective of water quality in the Region and should be continued for its intended 5-Year duration. END

**019.005**

Comment text: At a minimum, I believe that current Enrollees under a Regional Order should be allowed to continue operating for the duration of the Regional Order. END

#### Regulatory structure (RS)

**RS-04**

**Summary comment: SWRCB General Order conflicts with existing Regional Board General Order(s). (19.004) END**

*Summary response: The Cannabis Policy and General Order are not entirely consistent with either of the orders adopted by the North Coast or Central Valley Regional Water Boards first and foremost because the two orders were not consistent with each other. However, the State Water Board began preparation of the Cannabis General Order using both of the documents as a starting point. While the Cannabis General Order is not identical to the approach taken in the existing Regional Water Board orders, staff disagree that it conflicts with the orders. All the orders are designed to protect water quality, there is more than one way to accomplish that goal. END*

Cannabis documents referenced:

**019.004**

Comment text: I believe that the Regional Water Boards are well positioned to evaluate conditions within the nine regions and where the SWRCB General Order conflicts with a Regional Order, the General Order should defer to the local expertise of the Regional Boards. Ideally the SWRCB General Order should allow the Regional Boards to retain enough flexibility to implement locally appropriate solutions that are equally protective of water quality. END

**RS-15**

**Summary comment: Make rules and regulations set by NC Regional Water Board order as standard statewide. Proposed General Order and Policy will replace the NC Regional Water Board AND CV Regional Water Board pilot programs and prohibit the development of site-specific watershed resource protection plans and additional financial burden on cannabis farmers. The proposed regulations should be closer to the North Coast Order, which considers the unique environment and was developed with local input. (19.004, 27.002,28.001, 57.001, 63.005, 64.004, 65.001) END**

*Summary response: Because the North Coast Regional Water Board adopted a waiver of WDRs, the authority to cover cultivators ends five years after adoption. By law, waivers of WDRs expire five years after adoption. It is more practical to cover the cultivation activities using a general order that does not expire and can be renewed.*

*The State Water Board worked with the Regional Water Boards and modeled the statewide Cannabis General Order on the North Coast Regional Water Board and Central Valley Regional Water Board orders. Because those orders were not consistent and the State Water Board is required to comply with Water Code section 13149 (passed by the Legislature in 2016 under Senate Bill 837), the Cannabis General Order is not entirely consistent with either of the orders. However, the Cannabis General Order does not disregard the previous compliance efforts. It includes a compliance schedule and allows for a site-specific compliance schedule for those sites with longer term implementation plans. Because the North Coast Regional Water Board approved the previous compliance plans, there is no reason to believe they would not renew the existing agreements.*

*Further, the Cannabis Policy and General Order have been revised in two ways to address the impacts to those enrollees under the existing Regional Water Board cannabis order. The first change is an extension of the transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019, allowing an extra year for cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the statewide Cannabis General Order adoption date will be allowed to continue operating with the originally approved Regional Water Board setbacks if the Executive Officer of the applicable Regional Water Board determines that the reduced setbacks will be protective of water quality.*

*END*

Cannabis documents referenced: CCP pg. 5, CCP Staff Rpt pg. 28,

**019.002**

Comment text: I believe the NCRWQCB carefully weighed these factors when drafting and implementing its Order and urge the State Water Resources Control Board to defer to this regional expertise and locally appropriate solution. END

**Birkas, Anna**

**Application for coverage (AP)**



**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**AP-14**

**Summary comment: The removal of the 5-year timeline provided by the North Coast Regional Water Board Conditional Waiver of WDRs is strongly opposed. The timeline is critical to allow farmers adequate time to comply with the requirements. END**

*Summary response: The Cannabis General Order requires applicants that will not be able to comply with Order requirements by November 15 of each year to submit a schedule for complying to the Regional Water Board. For any previously-established and agree-upon compliance schedules for applicants in the North Coast or Central Valley Regional Water Boards, the Regional Water Boards will likely maintain the same compliance schedule. Additionally, applicants that are currently enrolled in the North Coast Regional Water Board's Conditional Waiver of WDRs or the Central Valley Regional Water Board's General WDRs will not be required to enroll under the Cannabis General Order until July 2019. END*

*Cannabis documents referenced: Policy: pg 17, par 2; Att A: Sec 1, pg 15, Item 31; Staff rpt: pg 72, par 3; Order: pg 14, F42.a; Order: pg 21, C.3.a; Order: Att D, pg D-3, Item 5.4; Order: Att D, pg D-4, par 2; Order: Att D, pg D-9, par 2; Order: Att D, pg D-10, Item 6.1*

**038.023**

Comment text: Our region has a shortage of professionals, due to our low population and high number of cultivators. Most professionals have waiting lists and are not taking on new clients. Agencies are also behind. Most instream projects require waiting for the following dry season, often a year away, before permits are ready for work.

Please revert to the North Coast Regional Board's timeline process, of five years, with a potential of extension for difficult sites. Please allow the Regional Board's to develop and implement timelines. When property wide upgrades are required cultivators should be allowed a simple, relatively local and automatic timeline process .  
END

**Cost of compliance (CS)**

**CS-02**

**Summary comment: Review the requirement to use qualified professionals to determine if necessary considering the cost and burden of hiring specialists. END**

*Summary response: Use of qualified professionals ensures that work is performed by qualified individuals. This is consistent with the California Business and Professions Code, which requires technical reports that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, to be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. See the definition of qualified professional in the Cannabis Policy and General Order Attachment A for a list of other professionals that may supervise technical report preparation.*

*The due date for certain technical reports has been removed from the Cannabis General Order to allow cannabis cultivators to submit the reports in accordance with their schedule for conducting cultivation and cultivation-related activities. Additionally, applicants that are currently enrolled in the North Coast Regional Water Board's Conditional Waiver of WDRs or the Central Valley Regional Water Board's General WDRs will not be required to enroll under the Cannabis General Order until July 2019. END*

*Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Att A: Sec 1, pg 9, Item 5; Att A: Sec 2, pg 20, Item 5; Att A: Sec 2, pg 21, Items 8-9; Att A: Sec 2, pg 22, Items 13-14; Att A: Sec 2, pg 23, Item 23; Att A: Sec 2, pg 24, Items 26-27, 29-31; Att A: Sec 2, pg 26, Item 41; Att A: Sec 2, pg 28, Item 48; Att A: Sec 2, pg 29, Item 56; Order: Att D, pg D-4 through D-5 & D-9 through D-10*

**038.026**

Comment text: We recommend that the General Order state that the work is required to be done by contractors and professionals with appropriate licensure, but to avoid limiting this unnecessarily .  
END

**CS-10**

**Summary comment: For the regions where property-wide upgrades will be required, most cultivators will need a multi-year timeline to be able to afford the cost to comply. END**

*Summary response: Cannabis cultivators that will not be able to comply with certain requirements in the Cannabis Policy and the Cannabis General Order may contact the Regional Water Board to request a compliance schedule for complying with the requirements. END*

*Cannabis documents referenced: Policy: pg 17, par 2; Att A: Sec 1, pg 15, Item 31; Staff rpt: pg 72, par 3; Order: pg 14, F42.a; Order: pg 21, C.3.a; Order: Att D, pg D-3, Item 5.4; Order: Att D, pg D-4, par 2; Order: Att D, pg D-9, par 2; Order: Att D, pg D-10, Item 6.1*

**038.003**

Comment text: The property-wide requirements unique to the North Coast region already put most of these farmers at an economic disadvantage. If the state of California would like to capitalize on cannabis cultivators being responsible for remediating legacy impacts from timber harvest, ranching, mining, and other industries, with craft scale operations, they will need to allow extensive timelines, a streamlined process that can be addressed by farmer's themselves (without the extensive costs of professionals), and simple forms and procedures. This is in the best interest of the public trust as well as the region's economic stability. END

**038.022**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: For the regions where property wide upgrades will be required, most cultivators will need a multi-year timeline to be able to afford the cost of compliance. The North Coast order prioritize sites based on water quality impacts, requiring the farmer to do the easy and high impact sites first, and allowing more time for low impact difficult sites. A timeline should be an assumed part of the process, without requiring that dischargers request a timeline from the Deputy Director.

END

#### Definitions (DE)

##### DE-13

**Summary comment: Manhard Consulting suggests utilization of the current stream classification system based on presence of aquatic life and stream flow rather than reclassifying springs and seeps as a Class I watercourse. Manhard Consulting suggests that springs be defined separately in accordance with existing watercourse definitions. END**

*Summary response: The term "seep" has been removed from the Cannabis Policy. What was intended to be protected under the term "seep" will be protected under requirements for springs/artesian wells and/or wetlands as applicable. The riparian setback conditions of springs have also been modified to clarify the intent of classifying springs under Class I watercourses. Language has been added to Attachment A of the Cannabis Policy (Watercourse definition and Requirement 37 of Section 1 on Minimum Riparian Setbacks) to define a spring and distinguish between the setback around the head of a spring and the setback below the head of a spring. Additionally, the watercourse definitions have been updated to more closely align with the Forest Practice Rules. Information has been added to the Staff Report regarding the importance of springs and headwaters to the ecological health of watersheds. END*

*Cannabis documents referenced:*

##### 038.020

Comment text: The term "Seep" is undefined and ambiguous, and requires a large setback. How is the term "seep" differentiated from a spring? In the North Coast region, when the ground is saturated, everything seeps. For example, Hortonian overland flow, or water coming out of a gofer hole, should not be misconstrued as a "seep", or the entire region would be disqualified. END

#### Fees (FE)

##### FE-01

**Summary comment: A separate tier for craft scale operations, similar to North Coast Regional Water Board permitting tier (2,000 - 5,000 SF), should be created for the statewide order, and be subject to a less stringent monitoring requirement and a reduced annual fee. END**

*Summary response: The Cannabis General Order Attachment B presents the monitoring and reporting program for cultivators enrolled under the order. Only Tier 1 and 2 cultivators are required to prepare and submit annual monitoring reports. Cultivators that disturb less than 2,000 square feet, are conditionally exempt and do not have to submit annual monitoring reports. Conditionally exempt cultivators also pay substantially lower fees; they are only required to pay an application fee rather than the annual fee that Tier 1 and 2 enrollees are required to pay. The commenter does not state why craft scale sites should have a separate tier. However, the Cannabis Policy and General Order do include a tiered approach to regulation. However, the potential water quality degradation from small sites, especially those that are not required to comply with the best practicable treatment or control measures can be significant. Therefore, it is appropriate for such sites to be required to comply with the Cannabis Policy and General Order. Furthermore, all commercial cultivation activities (commodities that are destined for the medical or recreational marketplace) are required to register or enroll under the Cannabis General Order. Compliance with the Cannabis General Order is required for a cultivator to obtain a CDFCA cultivation license. For non-commercial activities, the Cannabis General Order provides personal use exemptions for medical or recreational cultivation activities. Sites that have a total disturbed area under 1,000 square feet and qualify for a personal use exemption are not required to register or enroll under the Cannabis General Order. Cultivators that disturb more than 2,000 square feet are deemed to be a higher threat to water quality and must enroll under the Cannabis General Order. The request of up to 5,000 square feet is significantly higher than the exemptions provided under the orders adopted by either the North Coast Regional Water Board (2,000 square feet), or the Central Valley Regional Water Board (1,000 square feet). A change was not made in response to the comment.*

*END*

*Cannabis documents referenced: Fee Regs*

##### 038.001

Comment text: The cannabis industry in our region is dominated by small scale cultivators, with cultivation sites between 2,000 to 10,000 square feet. The existing NCRWQCB Order puts cultivators with sites from 2,000 to 5,000 square feet, and who meet all standard conditions of the Order, into a first tier, with reduced enrollment fees and reporting requirements. Operations above 5,000 sq/ft, and those sites requiring remediation, pay higher fees and require more extensive reporting. We believe that placing craft scale operations in the same tier with operations up to one acre in size, and requiring the same enrollment fees creates an unfair economy of scale for craft cultivators and may force many out of business. W E believe that a separate tier for craft scale operations be created for the General Order, and assuming those operations meet the standard conditions of the Order, they should pay a reduced fee and have less stringent reporting requirements. END

#### Flow requirements, narrative (FR)

##### FR-02

**Summary comment: The forbearance period is too restrictive. The forbearance period doesn't take into consideration regional differences. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The State Water Board had to develop a statewide Policy that could be put in effect by January 1, 2018. The tight time frame for policy development did not allow the State Water Board to develop regional forbearance periods. Instead, the State Water Board had to develop a forbearance period that would be protective statewide. A typical outdoor cannabis cultivation site requires the most water at the same time that the majority of the state's water bodies are in their lowest flow period (summer to fall). Accordingly, the most significant impacts from water diverted for cannabis cultivation occur during the dry season. Increased diversion during this period greatly affects the quantity and quality of water available, negatively impacts designated beneficial uses, and threatens the survival of endangered salmon, steelhead, and other aquatic life. In an effort to minimize the impacts that may occur from current and anticipated increased levels of cannabis cultivation, the Policy includes a forbearance period, during which water diversions for cannabis cultivation are prohibited.*

*To ensure protection of salmonid species from the adverse effects of diversions during low flow periods, diversions are not permitted during the late spring, summer, or fall months, when streamflow is especially important to anadromous salmonid populations. The wet season diversion period (diversion period) is therefore restricted to the period of higher flows, from as early as November 1 to March 31, when water is most available and impacts on fishery resources will be minimized. As the State Water Board begins to develop regional policies or makes updates to the interim Policy, forbearance periods may be adjusted as necessary to protect water quality and designated beneficial uses.*

*The Policy has been amended to address the possibility of disruption for existing cannabis cultivators. Cannabis cultivators enrolled under the cannabis orders adopted by the North Coast Regional Water Board and Central Valley Regional Water Board are not required to enroll in the statewide cannabis General Order until July 1, 2019. This grace period allows existing enrollees time to install the necessary storage to comply with the Policy's forbearance period.*

*END*

*Cannabis documents referenced:*

#### **038.005**

Comment text: The General Order Instream Flow Requirements provide that Cannabis Cultivators shall not divert surface water for cannabis cultivation activities any time from April 1 through October 31, unless water is diverted from storage in compliance with Narrative Flow Requirement 4.

The requirement is a "one-size-fits-all" that does not appear to take into account local factors such as size of watershed, density of cannabis cultivation, size of cultivation, or the specific impacts of a given cultivation. END

#### **038.007**

Comment text: The forbearance requirement is inflexible and agnostic to local factors.

The Cannabis Cultivation Policy Staff Report ("Staff Report") states that increased diversion during normal irrigation months "greatly affects the quantity and quality of water available, negatively impacts designated beneficial uses, and threatens the survival of endangered salmon, steelhead, and other aquatic life." While this is no doubt true in many cases, it is not true where sufficient water is available to satisfy both irrigation and public trust needs. The Staff Report even acknowledges that while these impacts "may occur" from current and anticipated increased levels of cannabis cultivation, they are not certain.

Applying the aggressive forbearance period universally will certainly provide important protections for fish and wildlife, yet such a rigid forbearance rule will also cause unnecessary significant economic hardship, including eliminating otherwise viable cultivation operations. It may also result in more negative impact to the environment.  
END

### **FR-03**

**Summary comment: CDFW should determine the forbearance period on a case by case basis END**

*Summary response: The California Department of Fish and Wildlife (CDFW) may, under its own authority, require a forbearance period that is consistent with or different than the forbearance requirements in the State Water Board's Policy based on its assessment of what is protective of fish and wildlife. The State Water Board, under its authority, has determined that a forbearance period is needed in order to develop a statewide policy that is protective of water quality and designated beneficial uses. The establishment of a forbearance period is common in the State Water Board's administration of water rights. Examples include forbearance requirements in water right permits and licenses, in response to a fully appropriated stream declaration, and as part of the Policy for Maintaining Instream Flows in Northern California Coastal Streams. As stated in the Policy, in the event of duplicate or conflicting requirements, the most stringent requirements shall apply. END*

*Cannabis documents referenced:*

#### **038.009**

Comment text: We recommend that the forbearance period not be written into regulations, but be determined on a case-by-case basis through CDFW consultation under the LSA program. END

### **FR-14**

**Summary comment: General concerns regarding the New England Aquatic Base Flow Standard, Tessman, and the way in which groundwater is regulated under the Policy. END**

*Summary response: Please see Attachment 1 for FR-14 Summary Response. END*

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

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*Cannabis documents referenced:*

#### **038.014**

Comment text: The General Order treats groundwater under the influence of surface water as surface water, with regard to forbearance and permitting; and groundwater not under the influence may require forbearance if the SWRCB deems necessary. There is a lack of detail in the staff report on both issues.

It is generally recognized that all water sources are hydrologically connected, but that connectivity works on a different timescale than surface water. Hydrologically connected aquifers may influence streamflow the same season as the withdrawal, and thus have significant impacts, or they may have a seasonally minimal impact, contributing on a longer timescale, or not at all.  
END

#### **038.015**

Comment text: The New England Base Flow Method, used to determine need for groundwater forbearance, does not address connectivity, is not appropriate for heavily allocated watershed nor for rivers with dams, and was based on data collected in New England. This may result in groundwater forbearance without understanding whether it will increase stream flow, inadequate groundwater forbearance, or an inappropriate forbearance schedule. END

#### **038.017**

Comment text: This Methodology for developing numeric instream flow requirements is not appropriate for calculating base flow for all watershed in California and the argument that the SWB makes does nothing to address the groundwater-surface water temporal relationship. END

#### **038.018**

Comment text: We recommend that the SWRCB expand their methodology for implementing groundwater forbearance, address connectivity, and use performance based BMPs for stormwater. An example of such BMPs are described in the Mendocino County Resource Conservation District's publication titled: "Watershed Best Management Practices for Cannabis Growers and Rural Gardeners" is an excellent example of ways in which this order could go further to address groundwater recharge. END

### **WR-06**

**Summary comment: Cannabis should be treated like other agricultural crops and existing water rights should apply. END**

*Summary response: Water Code Section 13149 directs the State Water Board to "adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. The principles and guidelines adopted under this section may include, but are not limited to, instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. The principles and guidelines may include requirements that apply to groundwater extractions where the board determines those requirements are reasonably necessary for purposes of this section." Additionally, Water Code Section 13149 states "The principles and guidelines, including the interim principles and guidelines, shall include measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation." The State Water Board must abide by the Water Code and is therefore unable to treat cannabis cultivation like other agriculture activities that use water diversions. In particular, the Legislature has expressly mandated that the State Water Board regulate cannabis cultivation in a specific and distinct from the requirements for traditional agriculture. See also response WD-01. END*

*Cannabis documents referenced: Water Code Section 13149*

#### **038.011**

Comment text: Forcing a water right holder to institute forbearance on diversions for cannabis will also result in the absurd situation where they are entitled to continue to divert through the low flow periods for conventional purposes such as conventional crops or cattle, but must forbear on the portion of their right that is used only for cannabis. If they choose not to cultivate, they could continue to divert the full amount of their right with no forbearance. END

### **Grandfather coverage (GR)**

#### **GR-01**

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*

*END*

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Cannabis documents referenced:

#### 038.002

Comment text: We believe the existing Order in the North Coast region is adequate for protecting water resources. While the Order is strict and some site may not be able to comply, over 3,500 farms have already enrolled in the program in the North Coast Region. The clear majority of farms enrolling in the program have improvements to make on their land to meet the standard conditions of the order. Many operators will have to invest many tens of the thousands of dollars to comply, and that includes remediation of legacy environmental damage on their property. We have found that cultivators and landowners are eager to repair their watersheds, if the cost for doing so is within reach, and they can develop a compliance schedule that is economically feasible. Cultivators that have enrolled in the NCRWQCB Order have designed their operations around the specific standard conditions and limitations put forth by the Order. While the draft General Order is generally in line with the NCRWQCB order, there are several changes that will have drastic impacts on North Coast cultivators currently enrolled with the Regional Board. We believe that to create one standard for over 3,500 cultivators and then rewrite that standard two years into program create an unreasonable economic hardship for cannabis cultivators. Allow farmers that have enrolled with a Regional Board prior to the start of the Statewide Order, may continue to work under the existing order, and thus be "grandfathered in. END

### Monitoring, reporting (MR)

#### MR-04

**Summary comment: The Cannabis Policy and Cannabis General Order should include requirements to**

- use a licensed arborist when evaluating trees or conducting tree work;**
- include mention of a C-57 licensed well driller for installation of wells**
- include general engineering contractor's A license and the American Institute of Hydrology license for professional hydrologist**
- require that stream crossing and culvert designs be prepared by experienced fluvial geomorphologists END**

*Summary response: Attachment A has been revised to clarify contractor requirements. In California, anyone who contracts to perform work that is valued at \$500 or more in combined labor and material costs must hold a current, valid license from the California Contractors' State License Board. Licensed contractors are classified as general engineering, general building, or specialty contractors.*

- General engineering ("A" contractors) principally work with fixed works that require specialized engineering knowledge and skill. A general engineering contractor may perform the work or hire specialty contractors for specific tasks.*
- General building ("B" contractors) work on existing or new structures that require at least two unrelated types of work. In some cases a general building contractor can perform the work, but often must hire subcontractors with specialty licenses.*
- Specialty contractors ("C" contractors) are those who specialize in a particular skill or trade. Specialty or subcontractors usually are hired to perform a single task.*

*Because there is significant overlap between specialty contractor skills, more than one specialty contractor may be licensed to contract for a project.*

*Arborists and well drillers are specialty contractors and are subject to the state contracting laws. A general engineering "A" contractor's license has been added to the definitions. Professional hydrologist and fluvial geomorphologists are not recognized license types under the California Business and Professions code. However, a licensed civil engineer or professional geologist may have the American Institute of Hydrology endorsement and may demonstrate additional expertise related to the endorsement. END*

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Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Policy: Att B, pg 8, par 2; Staff rpt: App 3, pg 8, par 2

#### 038.024

Comment text: There are two licenses that should be added to the General Order: the General Engineering Contractor's A License, and the Professional Hydrologist, AID (American Institute of Hydrology) license. END

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**Regulatory structure (RS)**

**RS-01**

**Summary comment: SWRCB General Order should allow the Regional Boards more flexibility and deferment to implement locally appropriate solutions. Enrollees under a Regional Board order shall be allowed to continue until it expires. Allow each region to develop its own program or opt to use the new State Order. North Coast Region may use their existing Order and cannabis farmers can continue on their compliance track, or farmers that have enrolled in the Regional Board order shall be allowed to continue to work under existing conditions and thus be grandfathered in. Does the General Order allow Regional Boards to develop site-specific orders for those that do not fit into SWRCB General order?(15.004) (74.005) (77.002) (17.014) (18.004), (38.004). END**

*Summary response: The Cannabis General Order provides a transition period until July 1, 2019 for enrollees under the existing Regional Water Board orders. They may transition sooner if they prefer. Those cultivators that have initiated remedial activities at their facilities will not be penalized because the Cannabis General Order requires similar activities.*

*The Cannabis General Order does allow Regional Water Boards the alternative of preparing a region specific general order or site specific WDRs. However, California Water Code Sections 13146 and 13263 require that WDRs implement any applicable water quality control plan or policy. Any general order or site-specific order adopted by a Regional Water Board must be consistent with the requirements of the Cannabis Policy. Therefore, any region specific general order would be very similar to the Cannabis General Order. END*

*Cannabis documents referenced: CCP Staff Rpt pg. 28, GO 6b, pg. 2*

**038.004**

*Comment text: Allow each WQCB region, if they choose, to develop their own Cannabis Order, tailored to their specific hydrologic basins and addressing water resource issues specific to each region. Regional offices who are currently administering their Orders would be allowed to continue, and regional offices outside the pilot project areas could either develop their own orders or opt into the State General Order. END*

**RS-09**

**Summary comment: Cannabis Policy and General Order do not establish measurable and enforceable performance standards that are proactive and cost effective. Further, to qualify for a CEQA exemption to have no significant environmental impacts, Cannabis Policy shall allow Regional Board's to establish measurable and enforceable performance standards. (21.006, 38.027) END**

*Summary response: The Cannabis Policy and General Order do establish measurable and enforceable standards – including, but not limited to, slope thresholds for tier designations and compliance gage requirements to ensure streamflow standards are being met. Staff have worked to balance the cost of compliance with need to protect water quality and the beneficial uses of water. The CEQA exemption for approvals for which it can be “seen with certainty” that no significant environmental impacts will result necessarily relies on a comparison of the post-approval environment with the environmental baseline. Currently, cannabis cultivation is occurring in California’s watersheds without being subject to many of the water quality and diversion-related requirements in the Policy and General Order. Compared with the environmental impacts of cannabis cultivation that is currently occurring, those requirements will not result in a relaxation of applicable environmental laws and will not result in new environmental impacts. To the contrary, the requirements in the Policy and the General Order will reduce the environmental impacts of cannabis cultivation in California. END*

*Cannabis documents referenced:*

**038.027**

*Comment text: The State Board can make a greater impact with performance based requirements that are pro-active and cost effect than they can with the proposed prescriptive approach. Allowing for a performance based approach will result in an increase in enrollment, rather than with prescriptive, one-size fits all measures that have potentially devastating economic impacts, and may even result in a greater degradation of the public trust that the State is trying to protect. Requiring farmers to comply with hyper rigid guidelines, that do not have the scientific or legal backing to support their necessity, will result in a failure to protect both the public trust and economic hardship for many rural counties. END*

**Road building, land disturbance, slope stability (RB)**

**RB-10**

**Summary comment: The Cannabis Policy and Cannabis General Order should add class "A" general engineering contractors to the list of qualified professionals for conducting grading and earthwork. The Cannabis Policy and Cannabis General Order should also include a definition of grading and earthwork. Typically any cuts and fills greater than two feet or the displacement of more than 50 cubic yards requires a building permit. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Summary response: Attachment A requires compliance with all applicable state, city, county, or local regulations, ordinances, or license requirements including, but not limited to those for cannabis cultivation, grading, construction, and building. Class A contractors were added to the list of contractors. In general, Attachment A has been revised to clarify contractor requirements. In California, anyone who contracts to perform work that is valued at \$500 or more in combined labor and material costs must hold a current, valid license from the California Contractors' State License Board. Licensed contractors are classified as general engineering, general building, or specialty contractors.

- General engineering ("A" contractors) principally work with fixed works that require specialized engineering knowledge and skill. A general engineering contractor may perform the work or hire specialty contractors for specific tasks.
  - General building ("B" contractors) work on existing or new structures that require at least two unrelated types of work. In some cases a general building contractor can perform the work, but often must hire subcontractors with specialty licenses.
  - Specialty contractors ("C" contractors) are those who specialize in a particular skill or trade. Specialty or subcontractors usually are hired to perform a single task. Because there is significant overlap between specialty contractor skills, more than one specialty contractor may be licensed to contract for a project.
- Any grading and earthwork that have the potential to affect the quality of water or discharge to surface waters shall be performed in compliance with the Cannabis Policy and Cannabis General Order. END

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Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Policy: Att B, pg 8, par 2; Staff rpt: App 3, pg 8, par 2

#### 038.025

Comment text: The General Order says that all grading and earthworks shall be done by a state licensed C-12 Earthworks and Paving contractor. The CSLBs General A contractor's license should be included as it is often more appropriate for many earthworks jobs, such as: Irrigation, drainage, water power, water supply, flood control, inland waterways, dams, hydroelectric projects, levees, river control, railroads, highways, streets, roads, tunnels, sewage disposal systems, bridges, parks, playgrounds, recreation works, industrial plants, mines, land leveling and earthmoving projects, excavating, grading, trenching, paving, surface work, cement and concrete works. This license should be added to the Limitations on Earthmoving section. END

#### Setbacks (SB)

##### SB-01

**Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END**

Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END

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Cannabis documents referenced:

#### 038.019

Comment text: Additionally, the 150 foot setback from ponds, springs, wetlands, and seeps is unreasonable.

The General Order says that if you have an LSA then you may get approval from the Deputy Director to reduce setbacks in line with that agreement. While this provides an alternative, it is costly and unnecessarily arduous.

The setbacks should be reduced to NCRWQCB Order standards, and an LSA and/or Regional Water Board approval should be allowed to further reduce them.

Springs, wetlands and seeps should have a 50' setback consistent with Army Corp of Engineer setbacks. There is no reason to treat cannabis farmers differently than other farmers and developers. END

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**038.021**

Comment text: These setbacks will result in unnecessary economic hardship for cultivators. Some will need to redesign and relocate their infrastructure, costing many tens of thousands of dollars. Some will no longer have a viable location to continue farming, and thus their properties may go into foreclosure. Please use the setbacks from the NCRWQCB order, and allow Regional Boards and LSAs to further reduce them. END

**Water diversion, storage (WS)**

**FR-01**

**Summary comment: The Policy should implement a grace period to allow for the installation of storage facilities END**

*Summary response: The Policy has been updated to provide a waiver of the 2018 surface water dry season forbearance period (April 1, 2018 through October 31, 2018), with certain conditions, so that cannabis cultivators may divert during this period in a manner consistent with their water right or claim of right. Cultivators that make use of this waiver are required to: file for a Cannabis Small Irrigation Use Registration (SIUR) or submit an application for an appropriate water right permit to prepare for potential curtailment during the dry season of 2018 (triggered by Aquatic Base Flow Numeric Instream Flow Requirement); and install storage as soon as possible after storage has been authorized following the conclusion of the winter period. All water must be diverted under a valid basis of right and all cannabis cultivators will be subject to the aquatic base flow requirements put forth in the Policy. Further, all storage shall be installed in accordance with the Policy and General Order, which include requirements to protect water quality and beneficial uses, including plan development and approval prior to land disturbance, implementation of best practicable treatment controls, and no work during the winter period. END*

*Cannabis documents referenced:*

**038.008**

Comment text: Many cultivators cannot install storage facilities sufficient to sustain cultivation for such an extended period (April 1 to November). Further, in many cases, the work to install storage facilities will have a greater negative impact on the environment than would the diversion. END

**Water rights (WR)**

**WR-06**

**Summary comment: Cannabis should be treated like other agricultural crops and existing water rights should apply. END**

*Summary response: Water Code Section 13149 directs the State Water Board to "adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. The principles and guidelines adopted under this section may include, but are not limited to, instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. The principles and guidelines may include requirements that apply to groundwater extractions where the board determines those requirements are reasonably necessary for purposes of this section." Additionally, Water Code Section 13149 states "The principles and guidelines, including the interim principles and guidelines, shall include measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation." The State Water Board must abide by the Water Code and is therefore unable to treat cannabis cultivation like other agriculture activities that use water diversions. In particular, the Legislature has expressly mandated that the State Water Board regulate cannabis cultivation in a specific and distinct from the requirements for traditional agriculture. See also response WD-01. END*

*Cannabis documents referenced: Water Code Section 13149*

**038.006**

Comment text: The General Order Instream Flow Requirements provide that Cannabis Cultivators shall not divert surface water for cannabis cultivation activities any time from April 1 through October 31, unless water is diverted from storage in compliance with Narrative Flow Requirement 4.

The forbearance period should not apply to existing appropriative rights holders who seek to convert all or a portion of their existing agriculture to cannabis. END

**038.010**



## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: An appropriative water right should not be subject to forbearance under the General Order.

The General Orders states:

"All water diversions for cannabis cultivation from a surface stream, groundwater diversions from a subterranean stream flowing through a known and definite channel, or other surface waterbody are subject to the surface water forbearance period and instream flow Requirements..."

This rule applies to both new SIURs and pre-existing appropriative and pre-1914 rights. Applying this rule to pre-existing rights holders is not only unreasonable, it will cause unnecessary significant economic hardship, including eliminating otherwise viable cultivation operations. It may also result in more negative impact to the environment.

The Staff Report justifies its recommendation for universal forbearance on the conclusion that increased diversions during low flow periods "greatly affects the quantity and quality of water available, negatively impacts designated beneficial uses, and threatens the survival of endangered salmon, steelhead, and other aquatic life." While this is generally the case, it does not apply to those who have pre-existing water

rights. Pre-existing water right holders are bound by the terms of their licenses, which define the time, rate, and extent of their diversions. Any increase in diversion would represent a violation of the terms of their license and render the diverter subject to enforcement or revocation.

END

#### 038.012

Comment text: Would be cultivators with pre-existing rights must construct storage, and potentially seek additional water rights with the resulting financial and environmental impacts – without addressing the Staff Report's concerns regarding increased diversions. END

#### 038.013

Comment text: As a legal crop, cannabis irrigation is a reasonable and beneficial use of water. Treating it differently from other crops in the context of pre-existing water rights, where its cultivation will not increase the demand on water resources, is arbitrary and capricious, will have significant economic impacts on both property owners and government, and will not provide environmental benefits.

We strongly recommend that pre-existing appropriative and pre-1914 rights are treated as exceptions to the forbearance rule.

END

#### WR-15

**Summary comment: This Policy does little to promote greater performance from cannabis growers, such as considering groundwater recharge by best management practices for stormwater and that landowners can implement to sink and store water in the soil layer and aquifer. END**

*Summary response: The purpose of this Cannabis Cultivation Policy (Policy) is to ensure that the diversion of water and discharge of waste associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs. There are some requirements that will help promote efficient cultivation. However, the issues you raised are better addressed through other regulatory structures such as the Sustainable Groundwater Management Act. END*

*Cannabis documents referenced:*

#### 038.016

Comment text: This Policy does little to promote greater performance from cannabis growers, such as considering groundwater recharge by best management practices for stormwater and that landowners can implement to sink and store water in the soil layer and aquifer. END

### Bischoff, Daniel

#### Application for coverage (AP)

##### AP-04

**Summary comment: Sites under 2,000 square feet should not be required to register or enroll in the Cannabis General Order. END**

*Summary response: The commenter does not state why sites under 2,000 square feet should not be required to register or enroll. However, the potential water quality degradation from small sites, especially those that are not required to comply with the best practicable treatment or control measures can be significant. Therefore, it is appropriate for such sites to be required to comply with the Cannabis Policy and General Order. Furthermore, all commercial cultivation activities (commodities that are destined for the medical or recreational marketplace) are required to register or enroll under the Cannabis General Order. Compliance with the Cannabis General Order is required for a cultivator to obtain a CDFA cultivation license. For non-commercial activities, the Cannabis General Order provides personal use exemptions for medical or recreational cultivation activities. Sites that have a total disturbed area under 1,000 square feet and qualify for a personal use exemption are not required to register or enroll under the Cannabis General Order. A change was not made in response to the comment. END*

*Cannabis documents referenced: Policy: pg 13, par 3, 5; Policy: pg 14, par 8; Policy: pg 15, par 8; Policy: pg 18, par 2-3; Order: pg 2, F7.a; Order: pg 3, F7.c; Order: pg 4, F10, 12; Order: pg 5, F13; Order: pg 12, F41.a; Order: pg 13, F41.d*

#### 023.001

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: Those of us growing our medicine under 2000 ft2 just want left alone. We have not and are not signing up to pay thousands of dollars for what was free last year just to buy some protection. END

#### Calaveras Home Grown

##### Application for coverage (AP)

AP-07

**Summary comment: State Water Board should add regulations for indoor operations, which require massive resources and are not sustainable. END**

*Summary response: The State and Regional Water Boards responsibility is protection of current and future beneficial uses of water quality. The Cannabis Policy and General Order fulfill that responsibility. The Cannabis General Order regulates discharges of waste generated from outdoor cannabis cultivation activities and requires indoor cannabis cultivation activities to register. Certain waste discharges generated from indoor cannabis cultivation activities may be regulated by the State Water Board or Regional Water Board under a separate regulatory action. END*

*Cannabis documents referenced: Policy: pg 13, par 4; Policy: pg 14, par 7; Policy: pg 16, par 4-6; Staff rpt: pg 35, par 7; Order: pg 3, F7.b; Order: pg 5, F14*

034.001

Comment text: The most important action the Water Board can do is add regulations for indoor cultivation operations. Indoor cultivation is extremely detrimental to the environment. Both local jurisdictions and the Water Board do not understand commercial cannabis cultivation. Indoor cultivation requires massive resources and is not sustainable. The Water Board needs to develop regulations for indoor cultivation, especially hydroponic. END

#### Outreach, public notification (OP)

OP-01

**Summary comment: Outreach was insufficient. END**

*Summary response: The State Water Board held or participated in the following meetings during the development of the Cannabis Policy:*

- Eight public outreach meetings to solicit comments on Policy development - August 31 - October 4, 2016 (throughout CA)
- Calaveras County Water District Meeting – September 28, 2016 (Andreas)
- Siskiyou County Board of Supervisors Meeting – October 4, 2016 (Yreka)
- North Coast Regional Board Meeting – October 20, 2016 (Santa Rosa)
- North Coast Watersheds Science and Management Exchange Program – February 2, 2017 (Douglas City)
- California Water Action Plan Meeting – February 8, 2017 (Briceland)
- American Fisheries Society Conference – April 7, 2017 (Eureka)
- Mendocino County Permit Meetings – April 19, 2017 (Laytonville and Willits)
- Meetings with Association of California Water Agencies, Northern CA Water Association, Farm Bureau, wine stakeholders, water rights stakeholders – May 25, 2017
- California State Association of Counties, Humboldt County Regional Meeting – June 29, 2017 (Eureka)
- California Department of Food and Agriculture Draft Environmental Impact Report Public Meetings – July 11-20, 2017 (throughout CA)
- CA Growers Association Meetings – July 29, 2016; January 18, 2017; and July 10, 2017 (Sacramento)
- Two Public Information Meetings for Draft Policy and Draft General Order – July 20, 2017 (Eureka) and July 27, 2017 (Sacramento)
- Tribal Consultation with Karuk Tribe – August 1, 2017 (Orleans)
- State Water Board Workshop on Draft Policy and General Order – August 2, 2017 (Sacramento)
- Santa Cruz County State Cannabis Licensing Workshop – September 14, 2017 (Santa Cruz)
- Tribal Consultation with Blue Lake Rancheria, Yurok Tribe, Karuk Tribe, Bear River Band of the Rohnerville Rancheria, Hoopa Valley Tribe, and Wiyot Tribe – September 26, 2017 (Blue Lake)

*Meetings held by the State Water Board were noticed in local newspapers some of which include the Press Democrat, Ukiah Daily Journal, Sacramento Bee, Fresno Bee, LA Times, San Francisco Chronicle, Ventura County Star, and Eureka Times Standard. Notices were also sent electronically to anyone who had signed up for the State Water Board's "Cannabis Cultivators" email subscription list as well as the cannabis email lists for the North Coast Regional Water Board and the Central Valley Regional Water Board. State Water Board staff also participated in radio broadcasts and mailed the Notice of Public Hearing to all enrollees and applicants for coverage under the North Coast Regional Water Board and Central Valley Regional Water Board cannabis general orders..*

*At meetings, State Water Board staff informed the public of the State Water Board's efforts related to cannabis cultivation. Staff consistently solicited information and input from any interested parties, especially those that were involved in cannabis cultivation.*

*END*

*Cannabis documents referenced:*

034.004

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: The inclusion of cultivators in the development of these regulations is invaluable and it is obvious that they were not. The Water Board needs to continue the review of these regulations until they get proper input. END

#### Regulatory structure (RS)

##### RS-27

**Summary comment: The tier system is arbitrary and is unique to cannabis cultivation. (34.003) END**

*Summary response: It is a general personal statement by the commenter. The tier system in CCP is a unique approach developed for cannabis cultivation. The intent of this approach is to establish pertinent regulatory mechanism for cannabis farmers based on the size, type of operation, and threat to water quality. It is an effective regulatory mechanism that would avoid excessive regulatory requirements and cost burden for small cultivators and waiver applicants. END*

*Cannabis documents referenced:*

**034.003**

Comment text: The tier system is arbitrary and is unique to cannabis cultivation. END

#### WW discharge location (WW)

##### WW-02

**Summary comment: Hydroponic cultivations can dump thousands of gallons of contaminated water into the sewer system several times a year. END**

*Summary response: Hydroponic cultivations typically discharge wastewater when the irrigation water is no longer appropriate for the desired growing conditions. Indoor cultivation activities that discharge industrial wastewater to a community sewer system must meet the sewer system discharge requirements. State Water Board staff contacted the City of Littleton, CO wastewater treatment system operators to inquire about their experience with hydroponic wastewater discharges. The city representative reported no problems in the flow or treatability of the hydroponic wastewater. However, further testing is anticipated as the industry grows in California. END*

*Cannabis documents referenced: Policy: pg 16, par 3 – 5; Order: pg 5 – 6, F.14*

**034.002**

Comment text: Hydroponic cultivations can dump thousands of gallons of contaminated water into the sewer system several times a year. END

#### Caldwell, Kevin

##### Cost of compliance (CS)

##### CS-02

**Summary comment: Review the requirement to use qualified professionals to determine if necessary considering the cost and burden of hiring specialists. END**

*Summary response: Use of qualified professionals ensures that work is performed by qualified individuals. This is consistent with the California Business and Professions Code, which requires technical reports that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, to be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. See the definition of qualified professional in the Cannabis Policy and General Order Attachment A for a list of other professionals that may supervise technical report preparation.*

*The due date for certain technical reports has been removed from the Cannabis General Order to allow cannabis cultivators to submit the reports in accordance with their schedule for conducting cultivation and cultivation-related activities. Additionally, applicants that are currently enrolled in the North Coast Regional Water Board's Conditional Waiver of WDRs or the Central Valley Regional Water Board's General WDRs will not be required to enroll under the Cannabis General Order until July 2019. END*

*Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Att A: Sec 1, pg 9, Item 5; Att A: Sec 2, pg 20, Item 5; Att A: Sec 2, pg 21, Items 8-9; Att A: Sec 2, pg 22, Items 13-14; Att A: Sec 2, pg 23, Item 23; Att A: Sec 2, pg 24, Items 26-27, 29-31; Att A: Sec 2, pg 26, Item 41; Att A: Sec 2, pg 28, Item 48; Att A: Sec 2, pg 29, Item 56; Order: Att D, pg D-4 through D-5 & D-9 through D-10*

**043.015**

Comment text: The Department of Fish and Wildlife who is responsible for Stream Alteration Permits (1600's) does not require that a qualified professional design a culvert. Most folks oversize culverts to reduce or avoid clogging. Again, the "Handbook for Forest, Ranch and Rural Roads" contains formulas for appropriate sizing of culverts and diagrams for proper installation. By requiring the use of costly qualified professionals for almost any activity discourages folks from obtaining required permits. END

#### Definitions (DE)

##### DE-02

**Summary comment: The "trimming of cannabis" should not be included in the definition for "cannabis cultivation". This activity should be considered "cannabis processing". The CDFA and many rural jurisdictions are strongly encouraging off-site "trimming or processing" to minimize vehicular impacts to rural roads, watercourses and water quality in general. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The definition for "cannabis cultivation" in the Cannabis Policy is consistent with the definition for "cultivation" as contained within Business and Professions Code section 26001(I). In consideration of threat to water quality and watercourses, the Cannabis Policy uses total "Land Disturbance" which is broader than "cannabis cultivation" and is intended to capture the overall impact of "cannabis cultivation" and its related activities. END*

*Cannabis documents referenced: Policy & General Order Att A Definitions 3; Policy Attachment B pg 1; Appendix 3 pg 1*

#### 043.002

Comment text: The "trimming of cannabis" should not be included in the definition. This activity should be considered "cannabis processing". The CDFA and many rural jurisdictions are strongly encouraging off-site "trimming or processing" to minimize vehicular impacts to rural roads, watercourses and water quality in general. END

### DE-03

**Summary comment: Why is the canopy definition not used in the Cannabis Cultivation Policy? How does canopy definition relate to the cannabis cultivation definition? END**

*Summary response: Because cannabis can be cultivated by a number of different methods (e.g., high density planting, wide spacing planting, grow bags, raised beds, etc.), the concept of canopy acre is needed to determine the appropriate nitrogen application rate. For example, in widely spaced plantings, simple calculation of cultivation area would result in excessive nitrogen application because there are significant areas that are not planted. (There may be 1.5 acre of cultivation, but only 1.0 acre of plant growth.) A definition of canopy area was added to the Cannabis Policy and General Order and corrected in the Staff Report. END*

*Cannabis documents referenced: Policy Att B pg 3; Staff Report Appendix 3 pg 2*

#### 043.003

Comment text: It could be argued, based on the definition of "Cannabis Cultivation" (see above), drying and trimming/processing could be included as part of the "Cannabis Cultivation Area". Apparently DWR chose not to define canopy, which of course is different than the cannabis cultivation area. Not sure where this definition would be applied, but if it's used to quantify actual cannabis cultivation areas, it will be very misleading. END

### Flow requirements, narrative (FR)

#### FR-11

**Summary comment: we've been able to have coordination about our diversion rates, and were this Order to be adopted as written, the forbearance period particularly would be devastating for us. END**

*Summary response: The State Water Board had to develop a statewide Policy that could be put in effect by January 1, 2018. The tight time frame for policy development did not allow the State Water Board to develop regional forbearance periods. Instead, the State Water Board had to develop a forbearance period that would be protective statewide. A typical outdoor cannabis cultivation site requires the most water at the same time that the majority of the state's water bodies are in their lowest flow period (summer to fall). Accordingly, the most significant impacts from water diverted for cannabis cultivation occur during the dry season. Increased diversion during this period greatly affects the quantity and quality of water available, negatively impacts designated beneficial uses, and threatens the survival of endangered salmon, steelhead, and other aquatic life. In an effort to minimize the impacts that may occur from current and anticipated increased levels of cannabis cultivation, the Policy includes a forbearance period, during which water diversions for cannabis cultivation are prohibited.*

*The Policy allows cannabis cultivators to enter into agreements with the California Department of Fish and Wildlife and one or more cannabis cultivators to provide watershed-wide protection for fisheries that is comparable to or greater than the instream flow Requirements provided in the Policy. In such instances, the cultivators may request approval from the State Water Board to implement the agreement in place of the instream flow Requirements (numeric, narrative, and forbearance) in the Policy.*

*To ensure protection of salmonid species from the adverse effects of diversions during low flow periods, diversions are not permitted during the late spring, summer, or fall months, when streamflow is especially important to anadromous salmonid populations. The wet season diversion period (diversion period) is therefore restricted to the period of higher flows, from as early as November 1 to March 31, when water is most available and impacts on fishery resources will be minimized. As the State Water Board begins to develop regional policies or makes updates to the interim Policy, forbearance periods may be adjusted as necessary to protect water quality and designated beneficial uses.*

*END*

*Cannabis documents referenced:*

#### 043.016

Comment text: It is not responsible to identify restrict diversion based solely on dates. The diversion dates should be based on stream flow rate conditions, precipitation rates and expected weather conditions. END

### Monitoring, reporting (MR)

#### MR-09

**Summary comment: The local building department should be allowed to determine when a qualified professional is required, or there should be some exceptions to the requirement to use qualified professionals based on site-specific conditions. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The requirement in the Cannabis Policy and Cannabis General Order to use qualified professionals to perform certain work is consistent with the California Business and Professions Code, which requires technical reports that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, to be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. Determination of when a qualified professional is needed is based on the type of work that will be performed. Local building departments may have additional requirements that should be considered when selecting a consultant or contractor.*

*END*

*Cannabis documents referenced:*

#### 043.012

Comment text: The determination of requiring a "qualified professional" should be made by the local Building Department/Official based on site conditions. At a minimum there needs to be exceptions to the "qualified professional" based on site conditions. Once again, are grape, olive, green onion and carrot growers subject to the same regulations?  
END

### Outreach, public notification (OP)

#### OP-01

**Summary comment: Outreach was insufficient. END**

*Summary response: The State Water Board held or participated in the following meetings during the development of the Cannabis Policy:*

- Eight public outreach meetings to solicit comments on Policy development - August 31 - October 4, 2016 (throughout CA)
- Calaveras County Water District Meeting – September 28, 2016 (Andreas)
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*Meetings held by the State Water Board were noticed in local newspapers some of which include the Press Democrat, Ukiah Daily Journal, Sacramento Bee, Fresno Bee, LA Times, San Francisco Chronicle, Ventura County Star, and Eureka Times Standard. Notices were also sent electronically to anyone who had signed up for the State Water Board's "Cannabis Cultivators" email subscription list as well as the cannabis email lists for the North Coast Regional Water Board and the Central Valley Regional Water Board. State Water Board staff also participated in radio broadcasts and mailed the Notice of Public Hearing to all enrollees and applicants for coverage under the North Coast Regional Water Board and Central Valley Regional Water Board cannabis general orders..*

*At meetings, State Water Board staff informed the public of the State Water Board's efforts related to cannabis cultivation. Staff consistently solicited information and input from any interested parties, especially those that were involved in cannabis cultivation.*

*END*

*Cannabis documents referenced:*

#### 043.001

Comment text: Other than emails, if you happen to be on the CalCannabis or DWR's email list, I truly believe the stakeholder outreach was poorly advertised, if at all. I personally did not see any advertisements in the local papers, including the Times"-Standard, Redwood Times, the Humboldt Independent, the North Coast Journal or Emerald Magazine. Nor did I see any television advertisements or hear any radio advertisements. In any event, I was very disappointed in the public outreach and turnout. END

### Regulatory structure (RS)

#### RS-13

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: What other industries are as strictly regulated as the proposed regulations for Cannabis industry? The proposed regulations, including legacy condition requirements should apply to all agricultural and timber related activities that have a negative impact on water quality, aquatic habitat, riparian-habitat, wetlands, and springs. Cannabis cultivators are being singled out and regulated differently than any other agricultural industry in the State of California. (26.001, 80.004, 80.017) END**

*Summary response: Consistent with California Water Code section 13260, any waste discharge that could affect the water quality of the state requires the discharger to submit a report of waste discharge and obtain WDRs prior to initiating the discharge. Regulated discharges include a wide spectrum of activities including domestic wastewater discharges to septic tanks, food processing wastewater, timber harvest activities, agricultural food production, etc. Because cannabis cultivation is an activity that could affect the water quality of the state, it is also regulated. Additionally, SB 837 (codified as Water Code section 13149) expressly requires the State Water Board to develop a policy for water quality control to protect springs, wetlands, and aquatic habitat from the negative impacts of cannabis cultivation, specifically. It is pursuant to that legislative mandate that the State Water Board has developed the Policy and General Order.*

*The California Water Code section 13263 requires WDRs to implement any applicable water quality control plan (basin plan). The North Coast Regional Water Board has adopted basin plan amendments that address legacy issues, therefore they must be addressed for cultivators within the North Coast Region.*

*END*

*Cannabis documents referenced:*

#### **043.004**

Comment text: I truly believe the proposed regulations, including legacy condition requirements should apply to all agricultural and timber related activities that have a negative impact on water quality, aquatic habitat, riparian-habitat, wetlands, and springs. END

#### **043.017**

Comment text: I truly believe that cannabis cultivators are being singled out and regulated differently than any other agricultural industry in the State of California. END

### **Road building, land disturbance, slope stability (RB)**

#### **RB-08**

**Summary comment: Are requirements of the Cannabis Policy only applicable to cannabis cultivators? For example, asphalt grindings are prohibited by the Policy. County of Humboldt and many other jurisdictions have historically used asphalt grindings to top dress roads. If one is growing grapes or other agricultural commodity will they be allowed to use asphalt grindings? END**

*Summary response: The requirements of the Cannabis Policy are applicable to cannabis cultivators or anyone that engages in cannabis cultivation activities, as defined in the Policy, throughout California for commercial recreational, commercial medical, and personal use medical. The definition of cannabis cultivator includes any person or entity that engaged in cultivating cannabis that diverts water or discharges or threatens to discharge waste. If County of Humboldt or anyone who is growing grapes also engages in cannabis cultivation, the Cannabis Policy requirements will apply (e.g. no asphalt grindings in constructing access roads serving cultivation sites). END*

*Cannabis documents referenced: Policy and Order Att A, Sec 2, Req 24; Policy Overview; Policy and Order Att A, Overview - Definitions, p4; Policy Att B, Glossary p2; Staff Rpt App 3 p2.*

#### **043.013**

Comment text: The County of Humboldt and many other jurisdictions have historically used asphalt grindings to top dress roads. Do the rules apply just to cannabis cultivators? If one is growing grapes or other agricultural commodity will they be allowed to use asphalt grindings? Will the County be required to stop using asphalt grindings? END

#### **RB-10**

**Summary comment: The Cannabis Policy and Cannabis General Order should add class "A" general engineering contractors to the list of qualified professionals for conducting grading and earthwork. The Cannabis Policy and Cannabis General Order should also include a definition of grading and earthwork. Typically any cuts and fills greater than two feet or the displacement of more than 50 cubic yards requires a building permit. END**

*Summary response: Attachment A requires compliance with all applicable state, city, county, or local regulations, ordinances, or license requirements including, but not limited to those for cannabis cultivation, grading, construction, and building. Class A contractors were added to the list of contractors. In general, Attachment A has been revised to clarify contractor requirements. In California, anyone who contracts to perform work that is valued at \$500 or more in combined labor and material costs must hold a current, valid license from the California Contractors' State License Board. Licensed contractors are classified as general engineering, general building, or specialty contractors.*

- General engineering ("A" contractors) principally work with fixed works that require specialized engineering knowledge and skill. A general engineering contractor may perform the work or hire specialty contractors for specific tasks.
- General building ("B" contractors) work on existing or new structures that require at least two unrelated types of work. In some cases a general building contractor can perform the work, but often must hire subcontractors with specialty licenses.
- Specialty contractors ("C" contractors) are those who specialize in a particular skill or trade. Specialty or subcontractors usually are hired to perform a single task. Because there is significant overlap between specialty contractor skills, more than one specialty contractor may be licensed to contract for a project.

*Any grading and earthwork that have the potential to affect the quality of water or discharge to surface waters shall be performed in compliance with the Cannabis Policy and Cannabis General Order. END*

*Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Policy: Att B, pg 8, par 2; Staff rpt: App 3, pg 8, par 2*

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

*Updated: 10/13/2017*

**043.011**

Comment text: There needs to be a definition of grading and earthwork. Typically any cuts and fills greater than 2 feet or the displacement of more than 50 cubic yards requires a Building Permit. Many farmers routinely grade their access roads. Does existing road grading/maintenance need to be done by a Class C-12 contractor? Class "A" General Engineering Contractors are allowed to conduct land leveling, earthmoving, excavating, trenching and grading activities pursuant to Section 7056 of the Business and Professions Code. END

**043.014**

Comment text: Why does a water bar or rolling dip need to be "designed" by a qualified professional? Why not provide an option to either have the water bar or rolling dip "designed" by a qualified professional or installed by either a LTO, a licensed Class "A" or C-12 contractor or refer to the "Handbook for Forest, Ranch and Rural Roads" for the design, location of a water bar or rolling dip"? Many LTO's and Class "A"1 and Class C-12 contractors have many years of experience in installing water bars and rolling dips. END

**RB-11**

**Summary comment: "Prior to commencing any cannabis land development or site expansion activities the cannabis cultivator shall secure a qualified biologist. The cannabis cultivator and the Qualified Biologist shall consult with CDFW and CAL FIRE and designate and mark a no-disturbance buffer to protect identified sensitive plant and wildlife species and communities."**

***This is a very broad statement and, requirement. Does this regulation apply to personal recreation cannabis cultivation of six plants or less, cannabis activities on historical, traditional prime agricultural lands where it can be seen with certainty that no adverse environmental impacts would occur and, indoor cultivation within existing buildings?***

**Suggested Language: Prior to commencing any cannabis land development or site expansion activities that may result in a direct or indirect impact to sensitive plant and wildlife species and communities, the cannabis cultivator shall secure a qualified biologist. The cannabis cultivator and the Qualified Biologist shall consult with CDFW and CAL FIRE and designate and mark a no-disturbance buffer to protect identified sensitive plant and wildlife species and communities.**  
**END**

*Summary response: As stated in the Policy, "This Policy does not apply to recreational cannabis cultivation for personal use, which is limited to six plants under the Adult Use of Marijuana Act (Proposition 64, approved by voters in November 2016). Additionally, the term does not apply to land that has already been developed for agricultural activities. It applies only to new site development or expansion. The suggested language is not protective of sensitive plant and wildlife species and communities, as it does not provide a method for determining if they exist at the development site. END*

*Cannabis documents referenced:*

**043.005**

Comment text: Prior to commencing any cannabis land development or site expansion activities the cannabis cultivator shall secure a qualified biologist. The cannabis cultivator and the Qualified Biologist shall consult with CDFW and CAL FIRE and designate and mark a no-disturbance buffer to protect identified sensitive plant and wildlife species and communities.

Comment: This is a very broad statement and ,requirement. Does this regulation apply to personal recreation cannabis cultivation of six plants or less, cannabis activities on historical, traditional prime agricultural lands where it can be seen with certainty that no adverse environmental impacts would occur and, indoor cultivation within existing buildings?

Suggested Language: Prior to commencing any cannabis land development or site expansion activities that may result in a direct or indirect impact to sensitive plant and wildlife species and communities, the cannabis cultivator shall secure a qualified biologist. The cannabis cultivator and the Qualified Biologist shall consult with CDFW and CAL FIRE and designate and mark a no-disturbance buffer to protect identified sensitive plant and wildlife species and communities.  
END

**Tribal, cultural (TC)**

**RS-19**

**Summary comment: Once again polices and regulations regarding the ensnaring and strangling of wildlife is not the responsibility of DWR. The Department of Fish and Wildlife is the responsible agency for such things. Seems strange to propose that photo or biodegradable materials be banned. If anything, such materials should be encouraged. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The State Water Board has broad authority to mitigate and avoid significant effects on the environment caused by the Cannabis Policy, General Order, Small Irrigation Use Registration program, and activities they authorize, including significant effects on the environment caused by impacts to fish and wildlife. (Pub. Res. Code, § 21004; Cal. Code. Regs., tit. 14, §§ 15040–15041.) Water Code section 13149 grants the State Water Board broad authority to protect the environment from the negative impacts of cannabis cultivation. The statute provides authority to adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. (Wat. Code, § 13149, subd. (a)(1)(A).) This authority comes with a mandate to adopt measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation. (Id., subd. (a)(2).) The statute provides examples of measures that may be adopted, including instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. (Id., subd. (a)(1)(A).) However, the statute is clear that the State Water Board's authority is "not limited to" these examples, (ibid.), affirming that the State Water Board's authority is not limited to flow- or diversion-related measures.*  
END

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Cannabis documents referenced:

043.009

Comment text: On ce again polices and regulations regarding the ensnaring and strangling of wildlife is not the responsibility of DWR. The Department of Fish and Wildlife is the responsible agency for such things. Seems strange to propose that photo or biodegradable materials be banned. If anything, such materials should be encouraged. END

#### TC-06

**Summary comment: First of all DWR is not a responsible or trustee agency with regards to cultural resources. Again, "The purpose of the Cannabis Cultivation Policy (Policy) is to ensure that the diversion of water and discharge of waste associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs." Secondly, to prohibit any cultivation activities within 600 feet of an identified tribal cultural resource may not be necessary or even recommended by a qualified archaeologist or local Tribal Historic Preservation Officer (THPO). Finally, the cultivator should not be solely responsible for identifying any tribal cultural resource sites within the cannabis cultivation area. Again, the identification and preservation of cultural resources is not a responsibility of DWR. The regulation should be removed from DWR's proposed regulations. END**

*Summary response: Business and Professions Code section 26060 mandates that the State Water Board is the agency responsible for establishing conditions to ensure that individual and cumulative effects of water diversion and discharge associated with cannabis cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability; ensure that cultivation does not negatively impact springs, riparian habitat, wetlands, or aquatic habitat; and otherwise protect fish, wildlife, fish and wildlife habitat, and water quality. (See Bus. & Prof. Code, § 26060, subd. (f); id., § 26060.1, subd. (b); see also generally Wat. Code, § 13149.) In this capacity, the State Water Board has broad authority to mitigate and avoid significant effects on the environment caused by the Cannabis Policy, General Order, Small Irrigation Use Registration program, and activities they authorize, including significant effects on tribal cultural resources. (Pub. Res. Code, § 21004; id., §§ 21084.2, 21084.3; Cal. Code. Regs., tit. 14, §§ 15040–15041.) In addition, the Board has broad authority to prevent unlawful diversion, (Wat. Code, § 1052) and to prevent the waste and unreasonable use of water, (Cal. Const., Art. X, § 2; Wat. Code, § 275).*

*Water Code section 13149 grants the State Water Board broad authority to protect the environment from the negative impacts of cannabis cultivation. The statute provides authority to adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. (Wat. Code, § 13149, subd. (a)(1)(A).) This authority comes with a mandate to adopt measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation. (Id., subd. (a)(2).) The statute provides examples of measures that may be adopted, including instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. (Id., subd. (a)(1)(A).) However, the statute is clear that the State Water Board's authority is "not limited to" these examples, (ibid.), affirming that the State Water Board's authority is not limited to flow- or diversion-related measures.*

*California law is clear that an activity that causes a substantial adverse change to the significance of a tribal cultural resource is an activity that has a significant effect on the environment. (Pub. Res. Code, § 21084.2.) California law mandates that public agencies avoid damaging effects to tribal cultural resources. (Id., § 21084.3, subd. (a).) Cannabis cultivation activities and associated diversions in areas where cannabis cultivation may have the potential to substantially affect instream flows, typically undeveloped or lightly-developed rural areas, have the potential to significantly affect the environment by causing a substantial adverse change in the significance of tribal cultural resources, including sacred places, previously undisturbed archeological sites, and previously undisturbed human remains. These impacts are caused by diversion, construction of diversion works, and activities, like cultivation, that would not occur but for the ability to divert.*

*For the foregoing reasons, the cultural resources protection terms are reasonably necessary for the purposes of section 13149 of the Water Code.*

*The purpose of the 600 foot setback for identified tribal cultural resource sites is to prevent cannabis cultivation from causing a substantial adverse change in the significance of a tribal cultural resource. (See Pub. Resources Code, § 21084.2.) The State Water Board solicited comments from hundreds of California Native American tribes and performed numerous consultations with tribes in developing tribal cultural resource protection terms for the Cannabis Policy. Cannabis Cultivation near tribal cultural resource sites is highly controversial based on the comments received. The general view was that setbacks were necessary to prevent a substantial adverse change in the significance of tribal cultural resources. Some California Native American tribes requested a minimum buffer of 1,000 feet or more. The State Water Board has determined, based on evidence in the record, that a 600 foot setback is sufficient to prevent substantial adverse changes, is reasonable, and is an appropriate "floor" of protection for a rule of statewide application. The 600 foot setback is also consistent with Humboldt County's cannabis cultivation ordinance, (see Humboldt County Code, § 55.4.10, subd. (c)).*

*Cannabis cultivators are frequently present within the cultivation area, are familiar with their operations, undertake site development and cultivation activities, and are generally responsible for complying with applicable laws, regulations, and requirements. Therefore, cannabis cultivators are well situated to identify tribal cultural resource sites within the cultivation area. Accordingly, requiring that cannabis cultivators do so to comply with tribal cultural resource protection terms in the Cannabis Policy is reasonable.*

END

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Cannabis documents referenced:



**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**043.006**

Comment text: First of all DWR is not a responsible or trustee agency with regards to cultural resources. Again, "The purpose of the Cannabis Cultivation Policy (Policy) is to ensure that the diversion of water and discharge of waste associated with cannabis cultivation does not have a

negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs." Secondly, to prohibit any cultivation activities within 600 feet of an identified tribal cultural resource may not be necessary or even recommended by a qualified archaeologist or local Tribal Historic Preservation Officer (THPO). Finally, the cultivator should not be solely responsible for identifying any tribal cultural resource sites within the cannabis cultivation area. Again, the identification and preservation of cultural resources is not a responsibility of DWR. The regulation should be removed from DWR's proposed regulations.  
END

**TC-07**

**Summary comment: Again, the identification and preservation of cultural resources is not a responsibility of DWR. This regulation should also be removed from DWR's proposed regulations. In addition, there are situations where a records search may not be necessary for the following reasons:**

- One may have been previously done for another project or as part of a Timber Harvest Plan (THP);
- The area may have historically utilized for crop production where previous tilling/farming activities occurred;
- The cultivation area is not located in an area where prehistoric cultural resources would be likely because of its location, physical and topographic features;
- There are a number of other proximate, more desirable locations.

**The recommended regulation should be incorporated into Section 8313 of the California Code of Regulations, "Environmental Protection Measures".**

**END**

*Summary response: The State Water Board has broad authority to mitigate and avoid significant effects on the environment caused by the Cannabis Policy, General Order, Small Irrigation Use Registration program, and activities they authorize, including significant effects on tribal cultural resources and archaeological resources. (Pub. Res. Code, § 21004; id., § 21083.2; id., § 21084.3; Cal. Code. Regs., tit. 14, §§ 15040–15041.)*

*As written, Attachment A requires a records search at a California Historical Resources Information System (CHRIS) information center for Native American archeological or cultural resources "[p]rior to land disturbance activities for new or expanded cannabis cultivation." A previous CHRIS records search specific to the site where new or expanded cannabis cultivation will occur will satisfy this requirement unless an intervening project on the site led to the discovery of additional archaeological resources. Accordingly, Attachment A will be amended to state that requirement to perform a CHRIS records search may be satisfied by using the results of a previous CHRIS records search completed within the previous 10 years for the specific parcel or parcels where new or expanded cannabis cultivation activities are proposed to occur. Ten years was determined to be a reasonable period based on comments received.*

*Note that the Cannabis Policy will be amended to also require a Sacred Lands Inventory search through the Native American Heritage Commission prior to land disturbance activities for new or expanded cannabis cultivation activities. Because the Sacred Lands Inventory is regularly updated at the request of tribes and because the revision may not otherwise become known to the cannabis cultivator, a new Sacred Lands Inventory search is always required prior to ground disturbing activities for new or expanded cannabis cultivation.*

*Previous use of a site for crop production will not necessarily ensure that Native American archeological or cultural resources are not present on a given property, and has no bearing on whether Sacred Lands File entries pertain to the site. The CHRIS and the Sacred Lands File are appropriate tools to identify areas where Native American archeological or cultural resources are not likely to be present. It is in part for this reason that the Cannabis Policy will require these searches prior to commencing land disturbance activities for new or expanded cannabis cultivation activities.*

*It is unclear what is meant by that statement "there are situations where a records search may not be necessary" because "[t]here are a number of other proximate, more desirable locations." The purpose of Term 19 is to mitigate and avoid significant effects on the environment, including significant effects on tribal cultural resources and archaeological resources. This is achieved, in part, by identifying cannabis cultivation sites where Native American archeological or cultural resources are more likely to be found and identifying appropriate conservation measures.*

*CDFA, not the State Water Board, is the agency responsible for draft regulations proposed to be codified at title 3, section 8313 of the California Code of Regulations. Cannabis Policy requirements will be incorporated into each cultivation license issued by CDFA. (See Bus. & Prof. Code, § 26060, subd. (f); id., § 26060.1, subd. (b); see also generally Wat. Code, § 13149.)*

**END**

*Cannabis documents referenced:*

**043.007**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: Again , the identification and preservation of cultural resources is not a responsibility of DWR. This regulation should also be removed from DWR's proposed regulations. In addition, there are situations where a records search may not be necessary for the following reasons:

- One may have been previously done for another project or as part of a Timber Harvest Plan (THP);
- The area may have historically utilized for crop production where previous tilling/farming activities occurred;
- The cultivation area is not located in an area where prehistoric cultural resources would be likely because of its location, physical and topographic features;
- There are a number of other proximate, more desirable locations.

The recommended regulation should be incorporated into Section 8313 of the California Code of Regulations, "Environmental Protection Measures".  
END

#### TC-08

**Summary comment: It is recommended that policy language note that ethnobotanical communities or culturally significant vegetation types comprise part of the cultural landscape and are thus protected as Tribal Cultural Resource. It should be noted that ethnobotanical resources and sites may not appear in the CHRIS record search, and that the "Qualified Biologist" or "Professional Archaeologist" assess cultivation areas and other areas planned for disturbance for the presence of ethnobotanical communities, especially if a CHRIS record search confirms that a tribal cultural site is within the application parcel. This may also require consultation with tribal natural resource department staff and botanists/ethnobotanists in addition to cultural resource staff.**  
END

*Summary response: The State Water Board thanks the Wiyot Tribe Natural Resources Department for its expertise in understanding the variety of tribal cultural resources that may be negatively affected by cannabis cultivation. Attachment A will be amended to require a search of the Sacred Lands Inventory that is maintained by the Native American Heritage Commission prior to land disturbance for new or expanded cannabis cultivation activities. Accordingly, California Native American tribes can achieve protection for known assemblages of ethnobotanical plant communities and culturally significant vegetation types through the Sacred Lands Inventory. Additional procedures for protecting resources listed on the Sacred Lands Inventory from the negative impacts of cannabis cultivation are described below.*

*In the event of a Sacred Lands Inventory positive result, the cannabis cultivator will be required to consult with culturally affiliated California Native American tribes, develop appropriate mitigation and conservation measures, submit proposed mitigation and conservation measures to the appropriate person(s) (Deputy Director for the Division of Water Rights or Executive Officer for the appropriate Regional Water Quality Control Board, as applicable) for written approval. The Deputy Director or Executive Officer, as applicable, has the authority to require all appropriate measures necessary to conserve archeological resources and tribal cultural resources listed on the Sacred Lands Inventory, including but not limited to Native American monitoring, preservation in place, and archeological data recovery. The cannabis cultivator shall also provide a copy of the final proposed mitigation and conservation measures to any culturally affiliated California Native American tribes identified by the Native American Heritage Commission. The Deputy Director or Executive Officer, as applicable, will carefully consider any comments or mitigation measure recommendations submitted by culturally affiliated California Native American tribes with the goal of conserving prehistoric archeological resources and tribal cultural resources with appropriate dignity.*

*In addition, terms 33 and 34 of the Cannabis Policy requires that cannabis cultivators avoid damage to riparian vegetation and oak woodlands, respectively. Terms 35 and 36 establish revegetation requirements.*

END

Cannabis documents referenced:

#### 043.008

Comment text: Once again, this is not a responsibility of DWR. This regulation should also be removed from DWR's proposed regulations. Section 8313 of the California Code of Regulations, "Environmental Protection Measures" already contains the recommended language regarding Section 7050.5 of the Health and Safety Code. END

#### WR-06

**Summary comment: Cannabis should be treated like other agricultural crops and existing water rights should apply.** END

*Summary response: Water Code Section 13149 directs the State Water Board to "adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. The principles and guidelines adopted under this section may include, but are not limited to, instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. The principles and guidelines may include requirements that apply to groundwater extractions where the board determines those requirements are reasonably necessary for purposes of this section." Additionally, Water Code Section 13149 states "The principles and guidelines, including the interim principles and guidelines, shall include measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation." The State Water Board must abide by the Water Code and is therefore unable to treat cannabis cultivation like other agriculture activities that use water diversions. In particular, the Legislature has expressly mandated that the State Water Board regulate cannabis cultivation in a specific and distinct from the requirements for traditional agriculture. See also response WD-01. END*

Cannabis documents referenced: Water Code Section 13149

#### 043.010

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: Once again, it appears that the cannabis industry is being treated different than any other industry, including agriculture, timber, mining, manufacturing, etc. Regardless of the industry, the Department is responsible to develop regulations to ensure that the diversion of water and discharge of waste associated with any land disturbance does not have a negative impact on water quality; aquatic habitat, riparian habitat, wetlands, and springs. As such, the proposed regulations should apply to all ground disturbing activities in the State of California. END

#### Cali Consulting Service

##### Regulatory structure (RS)

###### RS-14

**Summary comment: Controls placed on Cannabis farmers regarding water should be similar to those placed on other agricultural enterprises. There is a danger of crop conversions and cannabis cultivators will keep expanding to other areas because of loose regulations. END**

*Summary response: Because cannabis as a commodity was illegal until Proposition 215 passed, cannabis cultivation was and in many cases still is performed in remote areas. Cultivation activities in these remote areas (often different areas than traditional agricultural lands) can result in unique impacts associated with more intense land disturbance (e.g., road building and site development in remote areas) and the potential to impact threatened and endangered fish and aquatic species (i.e., coastal watersheds and headwater streams).*

*In many of these areas cultivators rely on local surface water for irrigation. The ongoing proliferation of cannabis cultivation has the potential to result in waste discharges and excessive diversions of water that impact water quality and beneficial uses of water.*

*Water Code Section 13149 directs the State Water Board to "adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. The principles and guidelines adopted under this section may include, but are not limited to, instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. The principles and guidelines may include requirements that apply to groundwater extractions where the board determines those requirements are reasonably necessary for purposes of this section." Additionally, Water Code Section 13149 states "The principles and guidelines, including the interim principles and guidelines, shall include measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation." The State Water Board must abide by the Water Code and is therefore unable to treat cannabis cultivation like other agriculture activities that use water diversions.*

*END*

*Cannabis documents referenced:*

###### 029.001

Comment text: Those natural resources that we have to protect, you know, our creeks, rivers, waterways, wetlands, species, critters, threatened, endangered, you know, all of those. And I just don't see a lot of that really being addressed in these orders, as much as I would when it comes to like our Central Valley farmers and stuff down here.

And I just have this, you know, thing that if you're going to allow them to clear-cut trees and do stuff, other crops are going to start moving up into some of those areas also, or they're going to keep expanding because they're not being regulated like our traditional agricultural crops are when it comes to needing surveys for taking trees down, surveys for wetlands prior to moving dirt, surveys for putting in roads and culverts and all those things you guys are addressing.

I mean, these are crop conversions going on in a natural and it all needs to be addressed, just like you would a regular agriculture. END

#### Water rights (WR)

##### WR-08

**Summary comment: I see there's just a little disconnect when it comes to what you're presenting, because you're talking about stream diversions.**

**Well, all of a sudden someone's going to think, whoa, I can divert the -- you know -- well, no, there's a lot of hoops you got to jump through to get that water out of that stream or creek or whatever. And it's almost making it sound like you're going to make it real easy to divert water and all this.**

**And they got to know that if they don't have a well, it's going to take months, possibly years to divert that water out of a stream legally with a permit. And you know, that's the thing, is they got to, you know, be planning ahead and knowing all of this stuff, that it's not just a -- you know -- can apply for a permit and get that diversion, you know, right there to irrigation our crop.**

**END**

*Summary response: In California, any diversion of surface water must be done under a valid basis of right. (E.g., Wat. Code, § 1052; Young v. State Water Resources Control Bd. (2013) 219 Cal.App.4th 397, 406.) The implementation of the Cannabis Policy does not change that. All cannabis cultivators are required to have a legal water right in order to divert water for cannabis cultivation. Many cannabis cultivators may choose to apply for a Cannabis Small Irrigation Use Registration (SIUR), which is a streamlined appropriative water right. END*

*Cannabis documents referenced:*

###### 029.002

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: I see there's just a little disconnect when it comes to what you're presenting, because you're talking about stream diversions. Well, all of a sudden someone's going to think, whoa, I can divert the -- you know -- well, no, there's a lot of hoops you got to jump through to get that water out of that stream or creek or whatever. And it's almost making it sound like you're going to make it real easy to divert water and all this. And they got to know that if they don't have a well, it's going to take months, possibly years to divert that water out of a stream legally with a permit. And you know, that's the thing, is they got to, you know, be planning ahead and knowing all of this stuff, that it's not just a -- you know -- can apply for a permit and get that diversion, you know, right there to irrigation our crop.  
END

#### California Department of Fish and Wildlife

##### Flow requirements, narrative (FR)

###### FR-10

**Summary comment: The Cannabis Policy states that the Groundwater Low-Flow Threshold was developed to "inform the need for additional actions to address impacts associated with cannabis groundwater diversions." The Department would like to continue to coordinate with the State Water Board on the application of approaches to calculate groundwater triggers or flow thresholds to reduce groundwater pumping and use impacts from cannabis cultivation. END**

*Summary response: The State Water Board will continue to coordinate and consult with CDFW in the implementation of the Policy. The State Water Board envisions continued consultation with CDFW to be an integral part in the development of regional policies and any update to the interim Policy. END*

*Cannabis documents referenced:*

###### 016.002

Comment text: The Cannabis Policy states that the Groundwater Low-Flow Threshold was developed to "inform the need for additional actions to address impacts associated with cannabis groundwater diversions." The Department would like to continue to coordinate with the State Water Board on the application of approaches to calculate groundwater triggers or flow thresholds to reduce groundwater pumping and use impacts from cannabis cultivation. END

###### FR-13

**Summary comment: For enforceability, clarity, and consistency with established scientific methods, the Department recommends replacing the "Low-Flow Threshold" terminology and how it is defined and applied in the Cannabis Policy and Staff report. In the Glossary of Terms, "Low Flow Threshold" is defined as "The minimum flow in a stream that is considered supportive of the aquatic ecosystem, including water quality and salmonid rearing and migration". The Department's Instream Flow Program developed a Low-Flow Threshold Fact Sheet, which defines a low-flow threshold as follows: "A low-flow threshold identifies where flow levels are receding into the 'danger zone' for aquatic life (DFO 2013). These are survival-level flows and definitely not 'optimal' ecological flows." END**

*Summary response: The term "low flow threshold" has been removed from the Cannabis Policy and replaced with the term "aquatic base flow". "Aquatic base flow" as defined under the New England Aquatic Base Flow Standard (ABF Standard) and the Cannabis Policy is the set of chemical, physical and biological conditions that represent limiting conditions for aquatic life in stream environments. The flows associated with the ABF Standard are often calculated from median monthly streamflow data. END*

*Cannabis documents referenced:*

###### 016.001

Comment text: For enforceability, clarity, and consistency with established scientific methods, the Department recommends replacing the "Low-Flow Threshold" terminology and how it is defined and applied in the Cannabis Policy and Staff report. In the Glossary of Terms, "Low Flow Threshold" is defined as "The minimum flow in a stream that is considered supportive of the aquatic ecosystem, including water quality and salmonid rearing and migration". The Department's Instream Flow Program developed a Low-Flow Threshold Fact Sheet, which defines a low-flow threshold as follows: "A low-flow threshold identifies where flow levels are receding into the "danger zone" for aquatic life (DFO 2013). These are survival-level flows and definitely not "optimal" ecological flows." END

##### Road building, land disturbance, slope stability (RB)

###### RB-12

**Summary comment: All cannabis cultivators should provide evidence that they have obtained valid permits for all land disturbances. END**

*Summary response: The Cannabis Policy pertains specifically to the State Water Board's authority and is not intended to be an all-encompassing document containing information regarding all potentially applicable regulatory requirements. It is the responsibility of the cannabis cultivator and the land owner to obtain all applicable state and local permits and authorizations. END*

*Cannabis documents referenced:*

###### 016.005

Comment text: All cannabis cultivators should provide evidence that they have obtained valid permits for all land disturbances. END

##### Setbacks (SB)

###### SB-02

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**Summary comment: Department supports a minimum 150 feet setback distance for all waters of the state measured from the high water mark. Setbacks protect the riparian zone as well as fish and their habitat (CALFIRE 2017). As buffer distances increase, sediment and other surface water pollutants decreases (Castelle, Connolly et al. 1992). Adequate setback distance is required to comply with the legislation and the State Water Boards antidegradation policy. In addition, Fish and Game Code section 5652(a) states "it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of the state or to abandon, dispose of or throwaway, within 150 feet of the high water mark of waters of the state, 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". END**

*Summary response: The Cannabis Staff Report has been updated to include the reference and language from Fish and Game Code section 5652(a) within the setback requirements justification to strengthen the rationale for setback distances. END*

*Cannabis documents referenced: CSR: pg #*

**016.006**

Comment text: Department supports a minimum 150 feet setback distance for all waters of the state measured from the high water mark. Setbacks protect the riparian zone as well as fish and their habitat (CALFIRE 2017). As buffer distances increase, sediment and other surface water pollutants decreases (Castelle, Connolly et al. 1992). Adequate setback distance is required to comply with the legislation and the State Water Boards antidegradation policy. In addition, Fish and Game Code section 5652(a) states "it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of the state or to abandon, dispose of or throwaway, within 150 feet of the high water mark of waters of the state, 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". END

**Water rights (WR)**

**WR-01**

**Summary comment: The Policy should include look at conditions more locally and include a process to support implementation and monitoring of the regulatory program and future revisions. END**

*Summary response: This interim Policy was developed under a short timeline to meet legislative mandates and ensure requirements were in place to protect water quality and beneficial uses in advance of the January 1, 2018 deadline for the California Department of Food and Agriculture's CalCannabis Licensing Program. The Cannabis Policy will be updated based on information and experience developed in the coming year(s).*

*The State Water Board plans to continue to consult with the California Department of Fish and Wildlife on any updates to the Policy and may develop an adaptive management framework for the Policy based on such consultation and coordination. END*

*Cannabis documents referenced:*

**016.003**

Comment text: The Cannabis Policy could benefit by including an adaptive management framework to provide a process to support implementation and monitoring of the regulatory program and any future revisions. END

**WR-02**

**Summary comment: To enhance clarity for applicants and overall enforcement, the Department recommends adding additional language that clearly discloses the Small Irrigation Use Registration (SIUR) availability or non-availability on Wild and Scenic Rivers, fully appropriated streams, and other designations that may prohibit SIUR issuance. END**

*Summary response: This Policy has been updated to indicate that the Cannabis Small Irrigation Use Registrations, like other appropriate water rights will not be issued for fully appropriated streams in the restricted diversion season, may not be available on rivers and streams designated as Wild and Scenic, and are not available where the water source is in a California Department of Fish and Wildlife (CDFW) Instream Flow Study area with a final flow recommendation from CDFW submitted to the State Water Board under Public Resources Code section 10002. END*

*Cannabis documents referenced:*

**016.004**

Comment text: To enhance clarity for applicants and overall enforcement, the Department recommends adding additional language that clearly discloses the Small Irrigation Use Registration (SIUR) availability or non-availability on Wild and Scenic Rivers, fully appropriated streams, and other designations that may prohibit SIUR issuance. END

**WR-03**

**Summary comment: Implementation of term number 48, may result in the unauthorized take of listed species under the state and federal endangered species acts. Authorization of incidental take of a listed species requires extensive approval, consultation, and permitting prior to relocating fish and wildlife species. At a minimum, compliance with California Endangered Species Act and federal Endangered Species Act are required. Obtaining regulatory authorizations prior to cannabis cultivation activities will address the intent of this term. We therefore recommend removal of this term. END**

*Summary response: Requirement 48 has been removed from the Policy. END*

*Cannabis documents referenced:*

**016.007**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: Implementation of term number 48, may result in the unauthorized take of listed species under the state and federal endangered species acts. Authorization of incidental take of a listed species requires extensive approval, consultation, and permitting prior to relocating fish and wildlife species. At a minimum, compliance with California Endangered Species Act and federal Endangered Species Act are required. Obtaining regulatory authorizations prior to cannabis cultivation activities will address the intent of this term. We therefore recommend removal of this term. END

#### WR-04

**Summary comment: The stream classifications in the Policy are inconsistent with the State Water Board's Policy for Maintaining Instream Flows in Northern California Coastal Streams and California Forest Practice Rules 2017. END**

*Summary response: The stream classifications have been updated to more closely align with the Forest Practice Rules. END*

*Cannabis documents referenced:*

#### 016.008

Comment text: The stream classifications provided in the Water Course definition are similar to, but inconsistent with, the State Water Board's Policy for Maintaining Instream Flows in Northern California Coastal Streams (North Coast Instream Flow Policy) and California Forest Practice Rules 2017 (Forest Practice Rules). For example, the Cannabis Policy criteria for a class II watercourse does not include presence of habitat for non-fish aquatic species while both the North Coast Instream Flow Policy and Forest Practice Rules use this as a determining factor. Additionally, the Cannabis Policy uses duration of flow in a typical year, in the absence of diversions, to determine watercourse classification. The Department recommends including references to support the use of duration of flow as a determining factor for watercourse classification and adding the presence of habitat for non-fish aquatic species to the criteria for a class II watercourse. END

### California Department of Parks and Recreation

#### Tribal, cultural (TC)

#### TC-04

**Summary comment: The meaning of the term "CHRIS potential discovery" is unknown. California Historical Resources Information System (CHRIS) records searches conducted by or for qualified archaeologists (or other qualified professionals) contain information about known recorded cultural resources - including, but not limited to, "historical resources" as defined in CEQA, and including, but not limited to, archaeological cultural resources.**

**These searches may be used to assess the likelihood of unrecorded cultural resources in the vicinity of the search area as well. As such, combining "CHRIS" and "potential discovery" into a single term is unclear. Please define the term "CHRIS potential discovery" or rewrite the language so that the requirement is understandable.**

**END**

*Summary response: The State Water Board thanks the California Department of Parks and Recreation, Blue Lake Rancheria, and the Wiyot Tribe for their comments and expertise. To address these issues, the draft order will be amended to replace the term "CHRIS potential discovery" with the term "CHRIS positive result." END*

*Cannabis documents referenced:*

#### 041.001

Comment text: The meaning of the term "CHRIS potential discovery" is unknown. California Historical Resources Information System (CHRIS) records searches conducted by or for qualified archaeologists (or other qualified professionals) contain information about known recorded cultural resources - including, but not limited to, "historical resources" as defined in CEQA, and including, but not limited to, archaeological cultural resources.

These searches may be used to assess the likelihood of unrecorded cultural resources in the vicinity of the search area as well. As such, combining "CHRIS" and "potential discovery" into a single term is unclear. Please define the term "CHRIS potential discovery" or rewrite the language so that the requirement is understandable.

END

#### TC-05

**Summary comment: The term "CHRIS qualified archaeologist" is unknown. The CHRIS access policy includes professional qualifications for archaeologists and other specialists associated with cultural resource management when using the CHRIS only. It is not a professional qualifications standard outside of that context. Also, there is a separate set of qualifications for a "professional archeologist" used and defined elsewhere in this section. The concern is with the potential misconception that the CHRIS certifies individuals as qualified to conduct archeological research in California - it does not - and that the inclusion of two possibly similar terms might cause confusion. Please define the term "CHRIS qualified archaeologist" or rewrite the language so that the intent is understood. END**

*Summary response: The State Water Board thanks the California Department of Parks and Recreation for its comments and expertise. For the reasons identified in the comment letter, the draft order will be amended to remove the term "Chris qualified archeologist" and require that an initial CHRIS search be performed by a person who meets qualification requirements for access to the CHRIS. In the event of a positive result in CHRIS, cannabis cultivators shall pertain a professional archeologist and perform the tasks described in Requirement 19. END*

*Cannabis documents referenced:*

#### 041.002

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: The term "CHRIS qualified archaeologist" is unknown. The CHRIS access policy includes professional qualifications for archaeologists and other specialists associated with cultural resource management when using the CHRIS only. It is not a professional qualifications standard outside of that context. Also, there is a separate set of qualifications for a "professional archeologist" used and defined elsewhere in this section. The concern is with the potential misconception that the CHRIS certifies individuals as qualified to conduct archeological research in California - it does not - and that the inclusion of two possibly similar terms might cause confusion. Please define the term "CHRIS qualified archaeologist" or rewrite the language so that the intent is understood. END

#### California Department of Resources, Recycling, and Recovery

##### Enforcement (EN)

###### EN-11

**Summary comment: Enforcement needs to be an important aspect of the Policy END**

*Summary response: The State Water Board recognizes that enforcement of both legal and illegal grows is part of any successful cannabis regulatory program. The Water Boards have a variety of enforcement tools. The Policy may be implemented directly per Water Code section 1847. The Policy Requirements will also be implemented through the Cannabis General Order, the Cannabis Small Irrigation Use Registration, General Water Quality Certification for Cannabis Cultivation Activities, and the California Department of Food and Agriculture's (CDFA) commercial cannabis licenses. The Policy includes a summary of the types of enforcement actions that may be taken by the Water Boards. The Water Boards will make every effort to coordinate any enforcement action among its various divisions, offices, and regions and not initiate duplicative enforcement on the same violations. The Water Boards will coordinate enforcement with other agencies, including CDFA and the California Department of Fish and Wildlife (CDFW) where appropriate.*

*In addition to the Water Boards' dedicated enforcement staff, legislation directed the Water Boards and CDFW to expand the scope of the Watershed Enforcement Team from its initial North Coast/Central Valley focus to address cannabis cultivation activities statewide. In addition to pursuing enforcement related to cannabis cultivation, this team also provides public outreach and education, performs site inspections, and responds to complaints. END*

*Cannabis documents referenced: CCP, pg. 20*

###### 003.001

Comment text: If money is not being provided to enforcement based on the fees collected where will the money come from? Who will be doing the enforcement? Will it be the local county and cities? Code enforcement? State? How often will cultivators be inspected for compliance? END

#### California Growers Association

##### Cost of compliance (CS)

###### CS-01

**Summary comment: The proposed requirements are too expensive to implement, especially for smaller farms. END**

*Summary response: The State Water Board's statutory mandate is protection of water quality. However, the State Water Board is aware of the costs of compliance imposed on cultivators and balances the requirements with the need to protect water quality. The cost of compliance is a function of the site specific conditions. Sites located a suitable distance from a water body on relatively level terrain are not required to implement a large number of BPTC measures. Sites located in close proximity to a water body or on a sloped property, are a higher threat to water quality and therefore are subject to additional BPTC measure requirements. Similarly, larger cultivation sites are an inherently higher threat to water quality and have additional requirements imposed upon them. For those facilities that cannot comply with the applicable BPTC measures, a schedule to achieve compliance can be obtained from the Regional Water Board. END*

*Cannabis documents referenced: Policy: pg 13, par 2, Item c; Policy: pg 15, par 4; Order: pg 3, Finding 7.c; Order: pg 5, Finding 13; Policy: pg 17, par 2; Policy: pg 22, par 5; Att A: Sec 1, pg 15, Item 31; Att A: Sec 1, pg 16, Item 36, fn 3; Att A: Sec 5, pg 70, par 6; Staff rpt: pg 71, par 4; Staff rpt: pg 72, par 3; Order: pg 14, Finding 42.a; Order: pg 21, C.3.a; Order: Att D, pg D-3, Item 5.4; Order: Att D, pg D-4, par 2; Order: Att D, pg D-9, par 2; Order: Att D, pg D-10, Item 6.1*

###### 022.001

Comment text: Cultivators thought they were signing up for one thing and now the Draft Order presents a very different structure that doesn't fit with the Early Adopter's plans and investments for their businesses. We are concerned that this will cause significant hardship for these businesses—the very same cultivators who are leading the way into the regulated future. END

###### CS-13

**Summary comment: The Cannabis Policy and Cannabis General Order rely heavily on qualified professionals. It would be more beneficial to establish a cultivator certification program to ensure landowners, residents, and operators have basic proficiencies in stewardship and management. END**

*Summary response: Many of the qualified professional titles listed in the Cannabis Policy and the Cannabis General Order are available from the State Water Board via training provided as part of the construction storm water program. However, certain engineering and geologic evaluations require the use of an appropriately licensed professional, consistent with the California Business and Professions Code. Providing training regarding cannabis land stewardship and management is beyond the responsibilities of the State and Regional Water Quality Control Boards. However, the State and Regional Water Boards have historically provided extensive outreach and education materials related to how agricultural activities can impact water quality. It is anticipated that the outreach will continue, but it is not part of the Cannabis Policy or General Order. A change was not made in response to the comment. END*

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

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Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Att A: Sec 1, pg 9, Item 5; Att A: Sec 2, pg 20, Item 5; Att A: Sec 2, pg 21, Items 8-9; Att A: Sec 2, pg 22, Items 13-14; Att A: Sec 2, pg 23, Item 23; Att A: Sec 2, pg 24, Items 26-27, 29-31; Att A: Sec 2, pg 26, Item 41; Att A: Sec 2, pg 28, Item 48; Att A: Sec 2, pg 29, Item 56; Order: Att D, pg D-4 through D-5 & D-9 through D-10

#### 062.002

Comment text: Establishing a cultivators certification course to ensure that landowners, residents and operators have basic proficiencies in stewardship and management would provide more positive benefit than heavy reliance on qualified professionals. END

### Grandfather coverage (GR)

#### GR-01

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*  
END

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Cannabis documents referenced:

#### 022.002

Comment text: 1.The State Water Board should allow for (provide an exemption or waiver) those cultivators, the Early Adopters, who have enrolled with the North Coast Regional Water Board Order R1-2015-0023 (filled out a Notice of Intent prior to July 1, 2017) to continue with the existing regulatory process, and build on that process to develop equivalent measures approved by the Regional Board and Department of Fish and Wildlife that meet the objectives and intent of the law.

2.If the Draft Order is adopted as is, cultivators who have enrolled under Order R1-2015- 0023 need to be given additional time to adapt their WRPPs, compliance schedules and implementation timelines to reflect the reality of what is and is not possible on the ground, and be afforded time to integrate landscape level compliance (road maintenance and remediating industrial logging legacy impacts) into their multi-year business plans. END

### Regulatory structure (RS)

#### RS-12

**Summary comment: Develop a clear process for the Regional Boards' to make site-specific programmatic exceptions and variances and transition from the Regional program to State Program. (22.003) END**

*Summary response: Limited variances can be allowed if the General Order provides guidance for implementation (makes the process ministerial rather than discretionary). A transition process is described in the Cannabis General Order for enrollees under a Regional Water Board order. All existing enrollees must transition to the Cannabis General Order by July 1, 2019. END*

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Cannabis documents referenced:

#### 022.003

Comment text: 3.Develop a clear process to allow for the regional board to make site specific and/or programmatic exceptions and variances where appropriate to accommodate site and regional specific considerations and conditions, specifically as a means of bridging any gaps that may exist as growers work to transition from the regional program to the state program. END

### Water diversion, storage (WS)

#### WS-03



## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

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**Summary comment: The Policy should not prohibit onstream reservoirs on class III streams. END**

*Summary response: The Policy does not prohibit onstream storage reservoirs. However, onstream storage reservoirs that do not have a valid existing water right for irrigation, issued prior to October 17, 2017 will not be able to qualify for the Small Irrigation Use Registration Program.*

*Any cannabis cultivator who wants to use an onstream storage reservoir for cannabis cultivation who does not have an existing water right will have to go through the appropriate water right process. The Policy is unable to evaluate or mitigate, the potential environmental impacts of unpermitted onstream reservoirs. Such impacts will be identified and mitigated in the appropriate water right process. Additionally, new onstream reservoir construction includes potential impacts that would require analysis through the California Environmental Quality Act process, which is not covered under the Policy.*

*In addition, the Policy requires that all onstream reservoirs used for cannabis cultivation shall be operated in a manner that is consistent with the requirements of the Policy including, but not limited to, all bypass flow requirements and forbearance periods.*  
END

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*Cannabis documents referenced:*

**062.001**

Comment text: We strongly encourage the State Water Resources Board to allow cannabis cultivators to utilize the small irrigation registration for on-stream storage ponds in Class III streams by making the following changes to item 82:

Onstream storage reservoirs are prohibited unless the cannabis cultivator has an existing water right issued prior to January 1, 2017 July 1, 2018 that authorizes the onstream storage reservoir. Cannabis cultivators who do not have an existing water right as of January 1, 2017 July 1, 2018, that authorizes the onstream reservoir storage, including cannabis cultivators with a pending application, an unpermitted onstream storage reservoir, and those who want to install a new onstream storage reservoir, are required to obtain an appropriate water right permit prior to diverting water from an onstream storage reservoir for cannabis cultivation.  
END

### California Trout; Trout Unlimited; The Nature Conservancy Enforcement (EN)

**EN-05**

**Summary comment: Annual SWRCB inspections of a sub-sample of permittees. These inspections could be prioritized based on density of sites in a watershed, reports of impacts, Tier 2 status, or threat to water quality, quantity, or third party program participation, for example. (54.001) END**

*Summary response: It is likely that inspections will be prioritized as suggested in the comment. In addition, use of aerial photographs, computer imaging software, as well as data reviews will assist in prioritizing watersheds. The Regional Water Boards will also consider the waterbodies to determine how sensitive they are to degradation effects. Each Regional Water Board prepares a water quality control plan (basin plan) for their region. The basin plan identifies present and future beneficial uses of water resources and presents a plan to protect the resources and beneficial uses.*

*Third party programs are not authorized under the Cannabis Policy and General Order. Third party representatives are allowed, but no anonymity is allowed under the proposed order. END*  
*Cannabis documents referenced:*

**054.001**

Comment text: Annual SWRCB inspections of a sub-sample of permittees. These inspections could be prioritized based on density of sites in a watershed, reports of impacts, Tier 2 status, or threat to water quality, quantity, or third party program participation, for example. END

**EN-06**

**Summary comment: Require third-party certification, at least for higher risk (e.g. Tier 2) farms, on enrollment, and third-party recertification or inspection on a regular basis (every 2-3 years) thereafter. (54.002) END**

*Summary response: The Cannabis Policy and General Order do not allow the use of third-party certification, as was allowed under the North Coast Regional Water Board's order. The Cannabis Policy and General Order allow the use of a third party as a representative in issues before the Regional Water Board. END*

*Cannabis documents referenced: CCP, Section 1. General Requirements and Prohibitions, and General Water Quality Certification for Cannabis Cultivation Activities, pg. 17*

**054.002**

Comment text: Require third-party certification, at least for higher risk (e.g. Tier 2) farms, on enrollment, and third-party recertification or inspection on a regular basis (every 2-3 years) thereafter.  
END

**EN-10**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: The draft Cannabis Policy does not provide a mechanism for addressing situations in which new water rights issued to cannabis diverters will compete with ongoing undocumented or documented surface water diversions and domestic water users. END**

*Summary response: All cannabis cultivators are required to divert water under the claim of a valid water right or a valid water right, whether it is an appropriative water right, Small Irrigation Use Registration, or pre-1914 water right. Water availability is reviewed during the water right application process regardless of the water right type. The State Water Board will continue to enforce on undocumented, illegal water diverters in an effort to bring people into compliance.*

*The Policy limits the amount of water that can be diverted from a watershed for cannabis cultivation through a combination of instream flow and related requirements, including: visual bypass requirements at the point of diversion, numeric flow requirements during the wet (diversion) season, a forbearance period, and maximum diversion rate. Additionally, per the Policy, cannabis cultivators in ungaged watersheds (such as smaller tributaries) may be required to install a gage if information indicates that use of the assigned compliance gage does not adequately protect instream flows.*

*Gages were evaluated for use as a compliance gage based on the location and available stream flow data. Based on this evaluation, the gages were placed into three main categories: compliance gage, compliance gage downstream of a dam, or excluded gage. Gages were excluded if they were not active, were slated for de-activation, did not report discharge, did not measure streamflow, or were heavily impacted by anthropogenic actions. Due to the tight timeframe for development of a policy (before January 1, 2018 commercial cannabis licensing deadline), the compliance gage evaluation was done at a coarse scale. Based on the course evaluation, the USGS gage on Lagunitas Creek in Marin County was excluded due to anthropogenic actions (i.e., downstream of large regulating reservoirs). The State Water Board recognizes that there are many additional gages throughout the state, including possibly the Lagunitas Creek gage that may be appropriate as compliance gages. To address this, the Policy allows for cannabis cultivators to submit a request to the Deputy Director of Water Rights for approval to use or install, maintain, and operate a local gage and move the flow Requirement compliance point to that gage location.*  
*END*

*Cannabis documents referenced:*

**054.013**

Comment text: The draft Cannabis Policy does not provide a mechanism for addressing situations in which new water rights issued to cannabis diverters will compete with ongoing undocumented or documented surface water diversions and domestic water users. END

#### EN-12

**Summary comment: Random selection and evaluation of the compliance reports should be conducted annually. END**

*Summary response: Annual random selection, evaluation, and site inspection of compliance reports is a viable method of evaluating compliance and is one of the approaches that may be used by the State Water Board. END*

*Cannabis documents referenced:*

**054.004**

Comment text: Random selection and evaluation of the compliance reports should be conducted annually. END

#### Flow requirements, narrative (FR)

##### FN-02

**Summary comment: Concerns over the use of the Tessman Method in developing instream flow requirements. END**

*Summary response: See Attachment 1 for FN-02 Summary Response. END*

*Cannabis documents referenced:*

**054.005**

Comment text: Given the deadline for promulgating this initial policy, the Staff Report may be correct that the Tessmann and New England methods are the best available to "meet the timeline, scale, and goals of this effort." But the SWRCB should expressly acknowledge the possibility that when implemented, the resulting interim flow thresholds may lead to widespread unacceptable impacts – either because they are under-protective or because they render compliance uneconomical – and may need to be rejected in favor of thresholds based on some other methodology such as one that limits cumulative diversion to a percentage of the unimpaired hydrograph. END

##### FR-12

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

*Updated: 10/13/2017*

*Summary comment: First, the draft Cannabis Policy provides the Deputy Director may approve proposed local cooperative solutions if local cannabis diverters and CDFW enter an agreement that provides “watershed-wide protection for the fishery” that is at least equal to that provided by the regular requirements. Does this mean that the local agreement must contain diversion terms (e.g., numeric, narrative, forbearance) that, if applied to all cannabis diversions in the watershed, would provide a comparable level of protection? Or does it mean that the terms, if applied to all diverters who are parties to the agreement will provide a comparable level of protection?*

*Second, the draft Cannabis Policy goes on to state:*

*Other local cooperative solutions may also be proposed to the Deputy Director as an alternative means of reducing water use to preserve the required instream flows. Local cooperative solutions may include proposals to coordinate diversions or share water.*

*We have several questions regarding this language. Does the phrase “other local cooperative solutions” refer to solutions other than proposed changes to diversion requirements (numeric, narrative, forbearance)? Or does it mean local cooperative solutions that are not based on agreements between CDFW and local diverters?*

*Finally, the Cannabis Policy should specify how the interested public will be provided notice of proposed local cooperative solutions that are submitted to the Deputy Director for approval.*  
**END**

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*Summary response: California Department of Fish and Wildlife (CDFW) agreements and local cooperative solutions are intended to provide an alternative method of complying with the requirements of the Cannabis Policy. Agreements and local cooperative solutions are variable and meant to encompass many possible compliance solutions. The Policy allows cannabis cultivators to enter into agreements with CDFW and one or more cannabis cultivators to provide watershed-wide protection for fisheries that is comparable to or greater than the instream flow Requirements (numeric, narrative, and/or forbearance) provided in the Policy. In such instances, the cultivators may request approval from the State Water Board to implement the agreement in place of the instream flow Requirements (numeric, narrative, and forbearance) in the Policy. Local cooperative solutions in the absence of CDFW agreement would not modify the Policy requirements, but would allow cultivators to coordinate diversions, share water, or install a local gage and move the flow requirement compliance point to the new gage location. The intent of the local cooperative solutions is not, however, to force all entities in a watershed to conform to an agreement that they were not party to. The Cannabis Policy has been updated to clarify local cooperative solutions may be proposed by cannabis cultivators. Additionally, the Cannabis Policy states that public notice of local cooperative solutions or agreements will be posted on the State Water Board website and notice provided to the “Cannabis Cultivators” email subscription list.*  
**END**

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*Cannabis documents referenced: Policy pg 19. Local Cooperative Solutions*

**054.007**

Comment text: First , the draft Cannabis Policy provides the Deputy Director may approve proposed local cooperative solutions if local cannabis diverters and CDFW enter an agreement that provides “watershed-wide protection for the fishery” that is at least equal to that provided by the regular requirements. Does this mean that the local agreement must contain diversion terms (e.g., numeric, narrative, forbearance) that, if applied to all cannabis diversions in the watershed, would provide a comparable level of protection? Or does it mean that the terms, if applied to all diverters who are parties to the agreement will provide a comparable level of protection? **END**

**054.008**

Comment text: Second , the draft Cannabis Policy goes on to state:

Other local cooperative solutions may also be proposed to the Deputy Director as an alternative means of reducing water use to preserve the required instream flows. Local cooperative solutions may include proposals to coordinate diversions or share water.

We have several questions regarding this language. Does the phrase “other local cooperative solutions” refer to solutions other than proposed changes to diversion requirements (numeric, narrative, forbearance)? Or does it mean local cooperative solutions that are not based on agreements between CDFW and local diverters? **END**

**054.009**

Comment text: Finally , the Cannabis Policy should specify how the interested public will be provided notice of proposed local cooperative solutions that are submitted to the Deputy Director for approval. **END**

**FR-14**

**Summary comment: General concerns regarding the New England Aquatic Base Flow Standard, Tessman, and the way in which groundwater is regulated under the Policy. *END***

*Summary response: Please see Attachment 1 for FR-14 Summary Response. **END***

*Cannabis documents referenced:*

**054.019**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: Success in protecting groundwater and connected surface waters will be dependent upon the nature of the groundwater/surface water interaction in a given place. For example, the concept of the "groundwater forbearance period" in the Cannabis Policy might be very relevant to a typical small mountain groundwater basin, but it might not be as relevant to a large groundwater basin in an alluvial valley where the impacts of excessive groundwater withdrawal may not be felt for weeks, months, years or longer. If the SWRCB's goal is to protect minimum flows across a diversity of settings, in some locations such as those where time lags are likely and where heavy cumulative groundwater diversions are anticipated, the SWRCB may want to consider a forbearance period that begins before flows are expected to hit the minimum flow level, since negative impacts on streamflow in some places could continue to occur even after pumping stops. END

#### 054.021

Comment text: We appreciate the modifications that the SWRCB has made so that the New England Aquatic Base Flow Standard (ABF) method can be applied in California. We found the modifications to be generally appropriate, but are unclear how the default minimum flow in small watersheds (<50 mi<sup>2</sup>) will be

determined where long-term gage data is not available. We suggest clarifying if and how default flow will be determined (e.g. unimpaired flow database, New England-derived values, or other). END

### Flow requirements, numeric (FN)

#### EN-10

**Summary comment: The draft Cannabis Policy does not provide a mechanism for addressing situations in which new water rights issued to cannabis diverters will compete with ongoing undocumented or documented surface water diversions and domestic water users. END**

*Summary response: All cannabis cultivators are required to divert water under the claim of a valid water right or a valid water right, whether it is an appropriative water right, Small Irrigation Use Registration, or pre-1914 water right. Water availability is reviewed during the water right application process regardless of the water right type. The State Water Board will continue to enforce on undocumented, illegal water diverters in an effort to bring people into compliance.*

*The Policy limits the amount of water that can be diverted from a watershed for cannabis cultivation through a combination of instream flow and related requirements, including: visual bypass requirements at the point of diversion, numeric flow requirements during the wet (diversion) season, a forbearance period, and maximum diversion rate. Additionally, per the Policy, cannabis cultivators in ungaged watersheds (such as smaller tributaries) may be required to install a gage if information indicates that use of the assigned compliance gage does not adequately protect instream flows.*

*Gages were evaluated for use as a compliance gage based on the location and available stream flow data. Based on this evaluation, the gages were placed into three main categories: compliance gage, compliance gage downstream of a dam, or excluded gage. Gages were excluded if they were not active, were slated for de-activation, did not report discharge, did not measure streamflow, or were heavily impacted by anthropogenic actions. Due to the tight timeframe for development of a policy (before January 1, 2018 commercial cannabis licensing deadline), the compliance gage evaluation was done at a coarse scale. Based on the course evaluation, the USGS gage on Lagunitas Creek in Marin County was excluded due to anthropogenic actions (i.e., downstream of large regulating reservoirs). The State Water Board recognizes that there are many additional gages throughout the state, including possibly the Lagunitas Creek gage that may be appropriate as compliance gages. To address this, the Policy allows for cannabis cultivators to submit a request to the Deputy Director of Water Rights for approval to use or install, maintain, and operate a local gage and move the flow Requirement compliance point to that gage location.*

*END*

*Cannabis documents referenced:*

#### 054.010

Comment text: ●The Cannabis Policy does not provide a ceiling, or methodology for determining a ceiling, that establishes a total acceptable withdrawal for a given watershed or basin. Without such a ceiling the SWRCB cannot assess cumulative watershed effects;

- the Cannabis Policy does not adequately address the volume and timing of water presently being diverted (legally or illegally) within a given basin;
- the Cannabis Policy does not address differences in spatial scale between mainstream tributaries and smaller tributaries, particularly in relation to salmonid life history and habitat requirements such as spawning ecology and fish passage. END

#### 054.011

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: bypass flows are poorly suited to regional-scale management in unregulated river/stream systems where multiple points of diversion (on the order of tens to hundreds) exist along long stretches of stream channels. Bypass flows often fail to protect the hydrologic variability and resultant ecological processes essential to protecting aquatic habitat beneficial uses and recovering sensitive species (King, Tharme, & Villiers, 2008; Richter, Baumgartner, Wigington, & Braun, 1997; Studley, Balridge, & Railsback, 1996). Moreover, bypass flows are inherently difficult to manage and enforce across large and remote geographic regions. Many of these criticisms of bypass flows have been raised in the scientific literature on environmental flows, and have not been adequately addressed in the draft Cannabis Policy.

The draft Cannabis Policy, modeled on the Policy for Maintaining Instream Flows in Northern California Coastal Streams (the "North Coast Policy") fails to adequately protect against adverse impacts of cumulative diversion. END

**054.012**

Comment text:

We believe an explicit cumulative maximum rate and/or a total allowable diversion volume (per unit area of watershed) should be part of the interim Cannabis Policy.  
END

#### Monitoring, reporting (MR)

**MR-13**

**Summary comment: Would be helpful to add to Term #84 as follows: "The cannabis cultivator shall install and maintain a measuring device(s) that meets the requirements for direct diversions greater than 10 acre-feet per year in California Code of Regulations, Title 23, Division 3, Chapter 2.720. The measuring device(s) shall be located at or near the point of diversion. Cannabis cultivators shall maintain records of daily diversion with separate records that document the amount of water used for cannabis cultivation separate from the amount of water used for other irrigation purposes and other beneficial uses of water (e.g., domestic, fire protection, etc.). Cannabis cultivators shall maintain daily diversion records at the cultivation site and shall make the records available for review or by request by the Water SWRCBs CDFW, or any other authorized representatives of the SWRCBs or CDFW. Compliance with this term is required for any surface water diversion for cannabis cultivation, even those under 10 acre-feet per year." END**

*Summary response: Term 84 has been updated to clarify that cannabis cultivators diverting water from surface water or a subterranean stream shall use a measuring device that is equivalent to that required for direct diversion greater than 10 acre-feet per year (device required per California Code of Regulations, Title 23, Division 3, Chapter 2.7. This requirement applies to all surface water diversions, including those that divert less than 10 acre-feet per year. END*

*Cannabis documents referenced: Att A: Term 84*

**054.024**

Comment text: Appendix A, p. 32 – Would be helpful to add to Term #84 as follows: "The cannabis cultivator shall install and maintain a measuring device(s) that meets the requirements for direct diversions greater than 10 acre-feet per year in California Code of Regulations, Title 23, Division 3, Chapter 2.720. The measuring device(s) shall be located at or near the point of diversion. Cannabis cultivators shall maintain records of daily diversion with separate records that document the amount of water used for cannabis cultivation separate from the amount of water used for other irrigation purposes and other beneficial uses of water (e.g., domestic, fire protection, etc.). Cannabis cultivators shall maintain daily diversion records at the cultivation site and shall make the records available for review or by request by the Water SWRCBs CDFW, or any other authorized representatives of the SWRCBs or CDFW. Compliance with this term is required for any surface water diversion for cannabis cultivation, even those under 10 acre-feet per year." END

**MR-14**

**Summary comment: Effectiveness monitoring is critical, but should not be the direct responsibility of the water users. The SWRCB (jointly with other agencies) should devise and implement an effectiveness monitoring program as part of an ongoing adaptive management plan. Provisions in this plan must show a demonstrable feedback loop from future monitoring results to potential Cannabis Policy changes. END**

*Summary response: Water Code section 13149 authorizes the State Water Board to develop both interim and long-term requirements and update them as necessary. It is anticipated that the State Water Board will update the Policy over time to modify or add requirements to address cannabis cultivation impacts, as needed. The State Water Board will consult, at a minimum with the California Department of Fish and Wildlife and California Department of Food and Agriculture, on the effectiveness of the Policy's requirements, need for separate effectiveness monitoring, and propose updates to the Policy, as appropriate. END*

*Cannabis documents referenced: WC section 13149*

**054.003**

Comment text: Require annual reporting of water diversion data (rates, amounts, timing), rather than allowing reporting of diversion data by request of CDFW or the SWRCB (change Section 1 – General requirements and prohibitions, Term 84).

To validate the efficacy of the new Cannabis Policy, guidelines for implementation monitoring should be drafted and required by the SWRCB as part of the water right application process. END

**054.016**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: Effectiveness monitoring is critical, but should not be the direct responsibility of the water users. The SWRCB (jointly with other agencies) should devise and implement an effectiveness monitoring program as part of an ongoing adaptive management plan. Provisions in this plan must show a demonstrable feedback loop from future monitoring results to potential Cannabis Policy changes. END

#### Regulatory structure (RS)

##### RS-10

**Summary comment: Grape growers in Region 2 who consider cultivating slopes over 5% are required to prepare an erosion control plan stamped by a civil engineer, whereas the Cannabis General Order requires self-certifying a hand-drawn site management plan. This is unfair and discriminatory against other growers. The Cannabis Policy relies on self-certification for compliance with all applicable requirements. Cannabis cultivators will not be familiar or experienced with these concepts and extensive regulations, so relying on self-certification risks widespread non-compliance. END**

*Summary response: The State Water Board developed statewide requirements for cannabis cultivators based on balancing the need to protect water quality and beneficial uses, on the one hand, with practical limitations facing cannabis cultivators, on the other. Unlike in other agricultural industries with more established regulatory regimes, cannabis cultivators in California often have difficulty finding qualified professionals who are available to prepare documents required by environmental regulators such as the State and Regional Water Boards. Additionally, where and how cannabis is cultivated in California differs from how other crops are cultivated in some material respects that are reflected in the requirements of the Policy and the General Order. The State Water Board endeavored to harmonize those requirements with existing requirements under certain Regional Water Board orders, but because of the diversity of requirements across the nine Regional Water Boards, it was not possible to develop statewide requirements for cannabis cultivation that would be consistent with all existing Regional Water Board orders.*

*Self-certification is an appropriate approach to initiate the State Water Board's cannabis regulatory programs given the short timeframe (by January 1, 2018) and large number of cultivators entering the regulated community. The Cannabis General Order requires that cannabis cultivators self-certify that all applicable best practicable treatment control (BPTC) measures are being implemented, or will be implemented by the onset of the winter period, following the enrollment date. Cannabis cultivators that cannot implement all applicable BPTC measures by the onset of the winter period, following their enrollment date, shall submit to the Regional Water Board Executive Officer a Site Management Plan that includes a time schedule and scope of work for use by the Regional Water Board in developing a compliance schedule.*

*Cannabis cultivators that do not comply with the requirements of the Cannabis Policy and General Order will be subject to enforcement activities from the Water Boards. Those enforcement activities may include orders for technical reports, revised and/or additional monitoring requirements, cleanup and abatement orders, cease and desist orders, administrative civil liabilities (fines), and a number of other enforcement alternatives, including terminating authorization to cultivate cannabis and a remedial order. The California Water Code provides ample authority for the Water Boards to address non-compliant cannabis cultivators. The State Water Board has an established cannabis enforcement program that will continue to work with the Regional Water Boards and California Department of Fish and Wildlife to address violations of the Policy and complaints.*

*END*

*Cannabis documents referenced: CCP pg. 17-23*

##### 054.023

Comment text: We are concerned that the Cannabis Policy relies on self-certification for compliance with all applicable Requirements in the Cannabis Policy (Section 1 – General requirements and prohibitions, Term 31).

Given the extensive breadth and depth of requirements in the Cannabis Policy, and the presumption that most cannabis cultivators will not be familiar or experienced with these concepts and extensive types of regulation in general, it seems risky to rely on self-certification. END

##### RS-18

**Summary comment: The Policy should include an adaptive management framework to assess impacts of Policy and identify needed changes. END**

*Summary response: The Cannabis Policy, including the narrative and numeric Instream Flow Requirements, may be updated over time as reasonably necessary. Water Code section 13149 directs the State Water Board to develop interim principles and guidelines (Requirements) pending the development of long-term requirements. The State Water Board will continuously monitor implementation of the Policy. It is anticipated that staff will formally report back to the State Water Board regarding implementation of the Policy and lessons learned, no later than two years after adoption of the Policy. It is further anticipated that the Cannabis Policy Requirements will be updated periodically as more information becomes available on the impacts of commercial cannabis cultivation, location of cannabis cultivation sites, and the source and amount of water used for cannabis cultivation. This structure allows the State Water Board to adaptively manage the Policy and its Requirements and allows stakeholders to participate and propose changes to the Requirements. At this time, the State Water Board does not believe an additional adaptive management plan is necessary for the interim Cannabis Policy Requirements. The State Water Board will evaluate the need for long-term adaptive management programs as part of updates to the interim Policy and the development of the regionally-specific, long-term requirements. END*

*Cannabis documents referenced:*

##### 054.006

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: We recommend that the SWRCB add a description in the Cannabis Policy that indicates when and how they will evaluate the performance of these interim requirements, and how they will make modifications. For example, in the SWRCB's Phase 1 Substitute Environmental Document (Appendix K), the SWRCB lays out their Procedures for Implementation of Adaptive Methods, how they will approach development and review of an Annual Adaptive Operations Plan, and how a Working Group will be assembled to help guide the SWRCB in their efforts at adaptive management. Creating something similar for the Cannabis Policy would help clarify the approach the SWRCB envisions for institutionalizing an adaptive process to refining these interim requirements. END

#### 054.015

Comment text: Given the high degree of uncertainty inherent in rolling out extensive regulations to a previously unregulated community on a very tight timeline, we urge the SWRCB to implement an adaptive management framework to assess impacts of the Cannabis Policy, and identify needed changes and amendments. As discussed, there are reasons to believe that the proposed thresholds based on the Tessmann and New England methodologies may be under-protective in some aspects END

#### RS-20

**Summary comment: The Policy should not supersede other environmental laws or regulations. Where there is conflicting requirements, the most restrictive should apply END**

*Summary response: This is correct. As stated in the Overview Section of Attachment A, "The cannabis cultivator shall comply with all Requirements in this Policy, and applicable federal, state, and local laws, regulations and permitting requirements, including SGMA. In the event of duplicate or conflicting requirements, the most stringent requirements shall apply." END*

*Cannabis documents referenced:*

#### 054.018

Comment text: We assume that the intent of this Cannabis Policy is that any restrictions placed on groundwater diversions for cannabis under this Cannabis Policy would be in addition to any requirements developed under the Sustainable Groundwater Management Act (SGMA) (i.e., the most restrictive rules would apply, and no special rights or exemptions would be created for cannabis cultivators). We suggest that this be more clearly stated in the Cannabis Policy, and if our interpretation is incorrect, that the relationship between the guidelines governing water use in this Cannabis Policy and under SGMA be clarified. END

### Resource, funding (RF)

#### RF-04

**Summary comment: Concern over the funding and staffing related to enforcement of the groundwater related Requirements of the Policy END**

*Summary response: The State Water Board will evaluate implementation programs for the Cannabis Policy Groundwater Requirements as a component of establishing specific groundwater requirements for localized areas where groundwater diversions for cannabis cultivation are having a potential negative impact on surface flows. Thus, the need to impose additional requirements on groundwater diversions would be triggered by an observed threat to the specific resources or impacts that Water Code section 13149 directs the State Water Board to protect: natural flow variability; instream flows for fish spawning, rearing, and migration; aquatic habitat; wetlands; and springs. Given the significant variations in hydrogeology throughout the state, the State Water Board determined that developing more specific requirements that would apply to all groundwater diversions was not appropriate at this time. The State Water Board will also coordinate with the local Sustainable Groundwater Management Programs, as appropriate. END*

*Cannabis documents referenced:*

#### 054.017

Comment text: the groundwater provisions are very general and provide only broad guidance for cannabis- related permitting. There will be a big and critical jump from this general Cannabis Policy to setting specific requirements for actual permits that will require detailed knowledge of a given groundwater basin. This will require substantial resources, including additional staffing, expertise and funding, and the draft Cannabis Policy doesn't clearly outline if those resources will be available and how they will be deployed and managed. END

#### 054.022

Comment text: Finally , we are concerned that the enforcement scheme described in Section 4 on page 45 related to groundwater use is unrealistic. It is unclear that the SWRCB and the Regional Boards have the budget or staff to enforce what is described in the groundwater section. Relying on self-policing is risky, as noted above. END

### Stream crossing (SC)

#### SC-05

**Summary comment: Attachment A should include requirements for cannabis cultivators to obtain take permits in items 38, 64, and 78 of Section 2. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: Because all of the referenced sections address obtaining a lake and streambed alteration agreement, a Section 404/401 water quality certification, or WDRs, the specific reference is not needed. The CDFW will impose the requirement to obtain a take permit if needed. The Cannabis Policy and Cannabis General Order include requirements related to the taking of threatened, endangered, or candidate species.*

*In addition, the Cannabis Policy and General Order requires cannabis cultivators shall not take any action which results in the taking of Special-Status Plants (state listed and California Native Plant Society 1B.1 and 1B.2) or a threatened, endangered, or candidate species under either the California Endangered Species Act(ESA) (Fish & Game Code §§ 2050 et seq.) or the federal ESA (16 U.S.C. § 1531 et seq.). If a "take," as defined by the California ESA (Fish and Game Code section 86) or the federal ESA (16 U.S.C. § 1532(21)), may result from any act authorized under this Policy, the cannabis cultivator must obtain authorization from CDFW, National Marine Fisheries Service, and United States Fish and Wildlife Service, as applicable, to incidentally take such species prior to land disturbance or operation associated with the cannabis cultivation activities. The cannabis cultivator is responsible for meeting all requirements under the California ESA and the federal ESA. END*

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*Cannabis documents referenced: Att A: Sec 1, pg 9, Item 4; Order: pg 15, F45*

#### 054.023

Comment text: Appendix A, p. 26 – Term #38 – need to add take permits (federal and state) to the list; especially if heavy equipment may be in the creek. In Term #40 specifically, we would recommend that the SWRCB call out the need for take permits if permittees are in a watershed with listed species and will have heavy equipment in the creek. Term #41 would also likely require take permits, and need to be authorized by CDFW and probably the Army Corps. Would be helpful to point that out.  
Appendix A, p. 30 – Term #64 – "Cannabis cultivators shall not disturb aquatic or riparian habitat, such as pools, spawning sites, large wood, or shading vegetation unless authorized under a CWA section 404 permit, CWA section 401 certification, Regional Water Board WDRs (when applicable), or a CDFW LSA Agreement" Also needs to include take permits (state and federal).  
Appendix A, p. 31 – Term #78, also need to include take permits (state and federal). END

### Water diversion, storage (WS)

#### WS-08

**Summary comment: "Cannabis cultivators shall not use off-stream storage reservoirs to store water for cannabis cultivation unless the reservoir is properly sited and has been designed by a qualified professional. Cannabis cultivators shall plant native vegetation along the perimeter of the off- stream storage reservoir."**  
**What proof is required and to what standards? Vegetation planted on the berm can result in flow paths along the roots and weight on the berm.**  
**END**

*Summary response: The Cannabis Policy (Requirement 86) has been modified to clarify the planting of native vegetation around water storage. The requirement now explains that the vegetation shall be planted in areas that will not impact the structural integrity of the reservoir berm or spillway. Additionally, vegetation management around the reservoir berm and spillway is required to provide for visual inspection and control of burrowing animals, as necessary.*

*The Cannabis Policy requires that off-stream storage reservoirs and ponds shall not be used to store water for cannabis cultivation unless site and designed or approved by a qualified profession in compliance with the Division of Safety of Dams, county, and/or city requirements, as applicable and provides for other design criteria when no such requirements are established.*

*END*

*Cannabis documents referenced:*

#### 054.025

Comment text: Appendix A, p. 33 – We advise editing Term #86 as follows: "Cannabis cultivators shall not use off- stream storage reservoirs to store water for cannabis cultivation unless the reservoir is properly sited, permitted, and has been designed and constructed by a qualified professional. Cannabis cultivators shall plant native vegetation along the perimeter of the off-stream storage reservoir." END

### Water rights (WR)

#### FN-02

**Summary comment: Concerns over the use of the Tessman Method in developing instream flow requirements. END**

*Summary response: See Attachment 1 for FN-02 Summary Response. END*

*Cannabis documents referenced:*

#### 054.014

Comment text: Tessmann study ...We are concerned that the approach was developed for a very different hydrologic region, hasn't been peer- reviewed, and has no published monitoring or scientific assessment substantiating its eventual efficacy.

...

Tessmann expresses concern with applying desktop instream flow methods developed for specific objectives in one region to an entirely different region. We agree and have concerns about its appropriateness for the diverse hydrological conditions across California. The Tessmann Method is likely not appropriate for California's highly variable inter-annual and intra-annual hydrology. END



**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**WR-11**

**Summary comment: The State Water Board needs to set forth clear guidance for determining whether a diversion is considered a surface water or groundwater diversion. END**

*Summary response: When considering an appropriation of groundwater, the State Water Board may have to evaluate the legal classification of the groundwater and determine whether it is a subterranean stream subject to the State Water Board's permitting authority. In doing so, the State Water Board applies a four-part test, which was upheld by the California Court of Appeal in North Gualala Water Co. v. State Water Resources Control Bd. (North Gualala) (2006) 139 Cal.App.4th 1577. In determining the legal classification of groundwater, the following physical conditions must exist for the State Water Board to classify groundwater as a subterranean stream flowing through a known and definite channel: (1) A subsurface channel must be present; (2) The channel must have a relatively impermeable bed and banks; (3) The course of the channel must be known or capable of being determined by reasonable inference; and (4) Groundwater must be flowing in the channel. END*

*Cannabis documents referenced:*

**054.020**

Comment text: In the case of many wells located close to surface streams, it will not be clear whether a diversion is drawing from groundwater, or instead from either surface water or groundwater within the Board's subterranean stream jurisdiction. The distinction is an important one, as the policy restrictions on each type of diversion (e.g. forbearance periods, bypass flows) are quite different. The Policy should set forth clear guidance for determining whether a diversion is considered a surface water or groundwater diversion. END

**Center for Biological Diversity**

**CEQA, permits (CQ)**

**CQ-10**

**Summary comment: The Cannabis Staff Report should clarify that work associated with access roads for cannabis cultivation is not covered by the 404(f) exemptions from federal regulation, and is subject to CWA Section 404/401 permits. END**

*Summary response: Depending upon the specifics of the situation, the Section 404(f) exemptions might apply in some cases. However, those activities remain subject to the timber harvest regulation at the Regional Water Boards as well as CAL FIRE, and the CDFW as appropriate.*

*Because cannabis cultivation is illegal under federal law, depending upon the specifics of the situation, the Army Corps may not issue a Section 404 permit. If the cultivator cannot obtain a Section 404 permit, and therefore cannot obtain a Section 401 certification, the cultivator will apply to the Regional Water Board for site specific WDRs or a determination that the activity may be covered under the Cannabis General Order.*

*The Cannabis Policy and General Order require that cannabis cultivators must obtain all required permits and approvals prior to the construction of any road constructed for cannabis cultivation activities. Permits may include section 404/401 CWA permits, Regional Water Board WDRs (when applicable), CDFW LSA Agreement, and county or local agency permits.*

*END*

*Cannabis documents referenced: Policy & Order Att A, Sec 2, Requirements 16; Staff Report, Background and Rationale, pg 33-34*

**056.002**

Comment text: The Cannabis Policy, General Order, and Cultivation Requirements should avoid any ambiguity and require a Lake and Streambed Alteration Agreement from the California Department of Fish and Wildlife for all stream crossings and be clear that roads constructed for cannabis cultivation activities are not covered by the Clean Water Act Section 404(f) exemption for road and forest roads. Cannabis cultivation is not a federally recognized legal activity and is thus, not subject to Clean Water Act exemptions. END

**Setbacks (SB)**

**SB-03**

**Summary comment: General Requirement 29 provides, "In timberland areas, unless authorized by CAL FIRE or the Regional Water Board Executive Director, Cannabis cultivators shall not remove trees within 150 feet of fish bearing water bodies or 100 feet of aquatic habitat for non-fish aquatic species (e.g., aquatic insects). (Public Resources Code section 4526.)". It is not clear whether this requirement applies to access roads – we believe that it should and should be stated in the Policy as such END**

*Summary response: Under General Requirement 30 (Requirement 29 in the draft Policy), no situation is exempt from the obtaining authorization prior to removal of trees within the defined distances. END*

*Cannabis documents referenced:*

**056.001**

Comment text: Any building, disturbance, land clearing, or operations of vehicles associated with road building and cannabis cultivations must be treated as land disturbance in riparian setbacks and should not be excluded from prohibitions or mitigations in the Cultivation Requirements. Prohibitions on the removal of trees and vegetation associated with road building and cannabis cultivation, including activities within 150 feet of fish bearing water bodies or 100 feet of aquatic habitat for non-fish aquatic species, should be explicit. END

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**SB-07**

**Summary comment: The term “to the maximum extent possible” does not sufficiently constrain impacts to riparian vegetation and should be revised to limit the percentage of on-site riparian vegetation that may be impacted for a cultivation project and to require appropriate mitigation for impacts to riparian vegetation. END**

*Summary response: Indicating that a baseline percentage of riparian vegetation may be removed would not be protective of the riparian zone and thus would not be protective of water quality. It is preferable, reasonable, and appropriate that all practicable efforts to minimize impacts to riparian vegetation be taken before removal and mitigation is considered. END*

*Cannabis documents referenced:*

**056.006**

Comment text: The term “to the maximum extent possible” does not sufficiently constrain impacts to riparian vegetation and should be revised to limit the percentage of on-site riparian vegetation that may be impacted for a cultivation project and to require appropriate mitigation for impacts to riparian vegetation. END

**Stream crossing (SC)**

**SC-03**

**Summary comment: The Cannabis Policy and Cannabis General Order should include clear guidance/clarification, or a specific list of activities, that require a water quality certification and Lake and Streambed Alteration Agreement. END**

*Summary response: Because the specifics of every situation cannot be forecasted, exhaustive lists are not practical. The Cannabis Policy and General Order require the cannabis cultivator to comply with all local, state, and federal laws. It is up to each cannabis cultivator to consult with the appropriate regulatory agency to determine what permits are necessary for their activities. END*

*Cannabis documents referenced: Att A: Overview, pg 3, par 1; Att A: Sec 1, pg 8, Item 1*

**056.005**

Comment text: The Cultivation Requirements would benefit from greater clarity and be easier to comply with if language regarding “activities in surface waters” were revised to include examples of activities in surface waters that will require water quality certification such as road crossings, creating culverts at stream crossings, bents for bridges that are located within the stream channel, or diversion structures. This term “activities in surface waters” should also be improved by stating that activities requiring water quality certification should require conformance with the California Environmental Quality Act. END

**SC-06**

**Summary comment: The State Water Board should not allow cannabis cultivators to self-certify that they are exempt from Clean Water Act section 401/404 or Lake and Streambed Alteration Agreements in order to assure no adverse effects on riparian areas or sensitive wildlife occur. END**

*Summary response: The Cannabis Policy and Cannabis General Order do not exempt cannabis cultivators from having to obtain other permits, such as a water quality certification or a Lake and Streambed Alteration Agreement, nor does the policy or general order allow a cultivator to self-certify they are exempt. END*

*Cannabis documents referenced:*

**056.003**

Comment text: The State Water Board should also avoid self- certification for exemption from Clean Water Act Section 404/401 or Lake and Streambed Alteration Agreements in order to assure no adverse effects on riparian areas or sensitive wildlife occur. END

**SC-07**

**Summary comment: Designs of creek crossings, culvert designs, and all new culverts and bridges over streams should be reviewed by State Water Board or Regional Water Board staff and should require the expertise of an experienced fluvial morphologist. END**

*Summary response: The Cannabis Policy and Cannabis General Order include a requirement that a cannabis cultivator seeking water quality certification coverage cannot commence work until the cultivator is provided authorization by the appropriate Executive Officer of the Regional Water Board or Executive Director of the State Water Board, and note that the Executive Officer or Executive Director may include specific monitoring requirements to ensure applicable state water quality standards are met. Additionally, projects that do not meet the criteria for coverage under the Cannabis General Water Quality Certification are required to apply for individual certification.*

*The design of civil engineering projects such as bridge or road design will be supervised by a licensed civil engineer. Fluvial geomorphologists is not a recognized license type under the California Business and Professions code. END*

*Cannabis documents referenced: Att A: pg 17, Item 4; Staff rpt: pg 34, par 3; Order: pg 2, F6.a*

**056.004**

Comment text: Designs of creek crossings should be reviewed by State Water Board or Regional Water Quality Control Board staff. The proper design of a stable culvert that will not trigger headcuts or scour pools requires the expertise of an experienced fluvial geomorphologist and the Cultivation Requirements should require that culvert designs be prepared by experienced fluvial geomorphologists. END

**Compliant Farms**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

#### Cost of compliance (CS)

##### CS-02

**Summary comment: Review the requirement to use qualified professionals to determine if necessary considering the cost and burden of hiring specialists. END**

*Summary response: Use of qualified professionals ensures that work is performed by qualified individuals. This is consistent with the California Business and Professions Code, which requires technical reports that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, to be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. See the definition of qualified professional in the Cannabis Policy and General Order Attachment A for a list of other professionals that may supervise technical report preparation.*

*The due date for certain technical reports has been removed from the Cannabis General Order to allow cannabis cultivators to submit the reports in accordance with their schedule for conducting cultivation and cultivation-related activities. Additionally, applicants that are currently enrolled in the North Coast Regional Water Board's Conditional Waiver of WDRs or the Central Valley Regional Water Board's General WDRs will not be required to enroll under the Cannabis General Order until July 2019. END*

*Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Att A: Sec 1, pg 9, Item 5; Att A: Sec 2, pg 20, Item 5; Att A: Sec 2, pg 21, Items 8-9; Att A: Sec 2, pg 22, Items 13-14; Att A: Sec 2, pg 23, Item 23; Att A: Sec 2, pg 24, Items 26-27, 29-31; Att A: Sec 2, pg 26, Item 41; Att A: Sec 2, pg 28, Item 48; Att A: Sec 2, pg 29, Item 56; Order: Att D, pg D-4 through D-5 & D-9 through D-10*

##### 065.007

Comment text: Qualified professional requirements are overly narrow and will result in a paucity of available professionals and excessive cost to cultivators. A qualified professional ought to be defined as 'an individual who possesses, at a minimum, a bachelor's or advanced degree, from an accredited university, with a major in soil science, geology, natural resources science, or a closely related scientific discipline, at least two years of field experience in erosion control and water quality issues present at the Cannabis Cultivation Site, and knowledge of state and federal laws regarding the protection of water quality. END

##### 065.008

Comment text: The qualifications for development of Disturbed Area Stabilization Plans and all other plans ought to be broadened to include an educational qualification. For example: A Qualified Professional ought to be defined as 'an individual who possesses, at a minimum, a bachelor's or advanced degree, from an accredited university, with a major in soil science, geology, natural resources science, or a closely related scientific discipline, at least two years of field experience in erosion control and water quality issues present at the Cannabis Cultivation Site, and knowledge of state and federal laws regarding the protection of water quality. END

#### Enforcement (EN)

##### EN-07

**Summary comment: All enforcement must be provided in writing to allow for clear understanding of the enforcement issues and appropriate resolution actions (65.006) END**

*Summary response: Enforcement can be performed at many levels and the California Water Code provides ample authority for the Regional Water Boards to make the enforcement effective in protecting water quality. Depending upon the significance of the violation, verbal instruction with follow up documentation may be adequate. The lowest level is verbal instructions during a site visit (e.g., something that can be accomplished while the inspector is present at the site such as instruction to cover bulk soil materials with a tarp). That level of enforcement is generally followed up with a note of the issue in an inspection report. If the violation is more significant, the Regional Water Board will issue an order pursuant to the appropriate California Water Code section. For serious violations, the enforcement order will be presented to the Regional Water Board at a public hearing. The Regional Water Boards are careful to issue enforcement orders that are clear, measurable, and have compliance schedules. Such orders are formal written documents. END*

*Cannabis documents referenced: CCP, Enforcement pg. 19-23*

##### 065.006

Comment text: All enforcement must be provided in writing to allow for clear understanding of the enforcement issues and appropriate resolution actions END

#### Flow requirements, narrative (FR)

##### FR-03

**Summary comment: CDFW should determine the forbearance period on a case by case basis END**

*Summary response: The California Department of Fish and Wildlife (CDFW) may, under its own authority, require a forbearance period that is consistent with or different than the forbearance requirements in the State Water Board's Policy based on its assessment of what is protective of fish and wildlife. The State Water Board, under its authority, has determined that a forbearance period is needed in order to develop a statewide policy that is protective of water quality and designated beneficial uses. The establishment of a forbearance period is common in the State Water Board's administration of water rights. Examples include forbearance requirements in water right permits and licenses, in response to a fully appropriated stream declaration, and as part of the Policy for Maintaining Instream Flows in Northern California Coastal Streams. As stated in the Policy, in the event of duplicate or conflicting requirements, the most stringent requirements shall apply. END*

*Cannabis documents referenced:*

##### 065.002

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: Surface Water Diversion Forbearance Periods

Comment 1: Lake and Streambed Agreements established with the California Department of Fish and Wildlife ought to set the standard to be followed.

END

#### Regulatory structure (RS)

##### RS-01

**Summary comment: SWRCB General Order should allow the Regional Boards more flexibility and deferment to implement locally appropriate solutions. Enrollees under a Regional Board order shall be allowed to continue until it expires. Allow each region to develop its own program or opt to use the new State Order. North Coast Region may use their existing Order and cannabis farmers can continue on their compliance track, or farmers that have enrolled in the Regional Board order shall be allowed to continue to work under existing conditions and thus be grandfathered in. Does the General Order allow Regional Boards to develop site-specific orders for those that do not fit into SWRCB General order?(15.004) (74.005) (77.002) (17.014) (18.004), (38.004). END**

*Summary response: The Cannabis General Order provides a transition period until July 1, 2019 for enrollees under the existing Regional Water Board orders. They may transition sooner if they prefer. Those cultivators that have initiated remedial activities at their facilities will not be penalized because the Cannabis General Order requires similar activities.*

*The Cannabis General Order does allow Regional Water Boards the alternative of preparing a region specific general order or site specific WDRs. However, California Water Code Sections 13146 and 13263 require that WDRs implement any applicable water quality control plan or policy. Any general order or site-specific order adopted by a Regional Water Board must be consistent with the requirements of the Cannabis Policy. Therefore, any region specific general order would be very similar to the Cannabis General Order. END*

*Cannabis documents referenced: CCP Staff Rpt pg. 28, GO 6b, pg. 2*

##### 065.001

Comment text: For the North Coast region, it is imperative that the standards established by Order No. 2015-0023 remain in place. END

#### Setbacks (SB)

##### SB-01

**Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END**

*Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END*

*Cannabis documents referenced:*

##### 065.003

Comment text: Site specific options ought to be considered for reducing riparian setbacks when no threat to water quality is presented.

Comment 2: Riparian setbacks ought to match those established in the North Coast Regional Water Board's program. Class I buffer = 100 feet, Class II buffer = 100 feet, Class III buffer = 50 feet.

Comment 3: Riparian setbacks for manmade wetlands ought not exist. During the process of slowing, spreading and sinking storm water flow, wetlands are often created. As such, an approved cultivation site might move into violation as the site drainage successfully infiltrates rainwater and creates a wetland. END

##### SB-08

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: Water pumps must be allowable within the riparian set back. A majority of cannabis cultivators in Northern California obtain their water from riparian sources thus must use a water pump to move water from within the riparian setback. END**

*Summary response: The Cannabis Policy (Requirement 73 in Section 2 of Attachment A) has been revised to allow pumps within a riparian setback if specifically approved by a CDFW LSA agreement, 404/401 Clean Water Act permits, coverage under the Cannabis General Order water quality certification, or site-specific waste discharge requirements (WDRs) issued by the Regional Water Board. END*

*Cannabis documents referenced:*

**065.004**

Comment text: Water pumps must be allowable within the riparian set back. A majority of cannabis cultivators in Northern California obtain their water from riparian sources thus must use a water pump to move water from within the riparian setback. END

### Third parties, coalitions (TP)

#### TP-01

**Summary comment: Officially sanctioned Third Party Programs ought to be removed. Many stories of approved third parties overcharging and underperforming exist. However, cannabis cultivators ought to be allowed to continue to work with professionals to represent them in issues related to application and compliance with the Cannabis General Order. END**

*Summary response: Cannabis cultivators can work with professionals of their choosing to assist with enrollment and compliance with the Cannabis General Order. Third party programs are not authorized under the Cannabis Policy and General Order. Third party representatives are allowed, but no anonymity is allowed under the proposed order. In developing the statewide Cannabis Policy and General Order, the State Water Board developed an on-line application system. The on-line application system will remove many of the delays encountered in some regional water board programs. The application process was developed so that people with little computer system familiarity will be able to navigate the application. However, if a cultivator elects to have a representative complete the application, that is also acceptable. With the streamlined application process, the need for third party programs is deemed unnecessary. END*

*Cannabis documents referenced: Policy: pg 17, par 3*

**065.005**

Comment text: Officially sanctioned Third Party Programs ought to be removed. Many stories of approved third parties overcharging and underperforming exist. However, cannabis cultivators ought to be allowed to continue to work with professionals to represent them in issues related to application and compliance with the Cannabis General Order. END

### County of Mendocino

#### Cost of compliance (CS)

#### CS-01

**Summary comment: The proposed requirements are too expensive to implement, especially for smaller farms. END**

*Summary response: The State Water Board's statutory mandate is protection of water quality. However, the State Water Board is aware of the costs of compliance imposed on cultivators and balances the requirements with the need to protect water quality. The cost of compliance is a function of the site specific conditions. Sites located a suitable distance from a water body on relatively level terrain are not required to implement a large number of BPTC measures. Sites located in close proximity to a water body or on a sloped property, are a higher threat to water quality and therefore are subject to additional BPTC measure requirements. Similarly, larger cultivation sites are an inherently higher threat to water quality and have additional requirements imposed upon them. For those facilities that cannot comply with the applicable BPTC measures, a schedule to achieve compliance can be obtained from the Regional Water Board. END*

*Cannabis documents referenced: Policy: pg 13, par 2, Item c; Policy: pg 15, par 4; Order: pg 3, Finding 7.c; Order: pg 5, Finding 13; Policy: pg 17, par 2; Policy: pg 22, par 5; Att A: Sec 1, pg 15, Item 31; Att A: Sec 1, pg 16, Item 36, fn 3; Att A: Sec 5, pg 70, par 6; Staff rpt: pg 71, par 4; Staff rpt: pg 72, par 3; Order: pg 14, Finding 42.a; Order: pg 21, C.3.a; Order: Att D, pg D-3, Item 5.4; Order: Att D, pg D-4, par 2; Order: Att D, pg D-9, par 2; Order: Att D, pg D-10, Item 6.1*

**074.015**

Comment text: The lack of flexibility to achieve the protections beyond the means identified in Attachment A will result in a significant portion of north coast growers not being able to qualify for coverage. The existing cultivators pursuing legal cultivation will be squeezed out after significant investment over the past two years. END

**074.016**

Comment text: Qualified professionals are required in numerous instances and those should be carefully reviewed to determine if necessary considering the cost. Shifting from the Regional Order which facilitates "self-enrollment" to the State Order creates an incredibly complex and technical approach that will require the hiring of costly consultants. END

#### CS-16

**Summary comment: Some of the terms in Attachment A may be unnecessarily overly restrictive and pose challenges for implementation or impose increased costs without environmental benefit.**

**The proposed requirements would cause myself and many other farmers throughout the county massive economic hardship at a time when our region can ill afford it  
END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The cost of compliance is an unavoidable part of implementing any water quality control policy that will both protect and enhance the existing environment and incorporate oversight for those protections. Direct cost analysis of the Cannabis Policy has been developed and can be found under Item 6 at the State Water Board's October 17, 2017 meeting agenda, which is available online at [https://www.waterboards.ca.gov/board\\_info/agendas/2017/oct/101717\\_agenda.pdf](https://www.waterboards.ca.gov/board_info/agendas/2017/oct/101717_agenda.pdf). There are two main costs: costs associated with regulatory oversight, and cost associated with cultivation site measures. Regulatory oversight costs are required to fund the state programs that both monitor and enforce the Cannabis Policy requirements. Regulatory costs are set by what funding is reasonably needed to perform those monitoring and enforcement tasks.*

*The State Water Board developed the Policy and associated requirements based on the practicalities of cannabis cultivation operations and the reality of water quality- and aquatic habitat-related impacts from cannabis cultivation in California. Compared to other irrigated agriculture, there are tangible differences in how and where cannabis is grown - detailed in the Staff Report - that militate in favor of cannabis-specific requirements that in many cases differ from requirements applicable to other irrigated agriculture. To give one example, cannabis cultivation operations tend to be concentrated high in the watershed, near headwaters or small tributaries that are more sensitive to waste discharges and water diversions than larger streams that flow at lower elevations. In contrast, much of California's irrigated agriculture occurs on flat and/or open terrain where any nearby waterbodies are less sensitive to changes in diversion patterns or waste discharges. Additionally, land disturbance activities associated with irrigated agriculture more frequently occur far enough away from nearby waterbodies that express riparian setback requirements are unnecessary.*

*Additionally, changes have been made to the Cannabis General Order that will potentially lower the costs of compliance for cannabis cultivators enrolled in an existing waste discharge requirement program. The first change is an extension of the transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019, allowing an extra year for cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the Cannabis General Order adoption date will be allowed to continue operating with the originally approved Regional Water Board setback if the Executive Officer of the applicable Regional Water Board determines that the setbacks will be protective of water quality.*  
**END**

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*Cannabis documents referenced: Add reference to Direct Cost Analysis when we know where it will be.*

#### **074.001**

Comment text: By the limitations set forth by the County cultivation ordinance (10,000 square foot maximum canopy size), all permitted farmers in Mendocino County are "Small Farmers" falling within the Tier 1 status of state levels (Tier 1 = 2,000 to 43,560 square feet).

Due to this severe size restriction, Mendocino County cultivators begin the process of permitting and compliance at an economic disadvantage, thus making them especially sensitive to the costs of compliance.

This proposed Order does not provide a viable option for most small farmers. If implemented as proposed, it will result in devastating economic impacts for northern California counties including Mendocino.  
**END**

### **Definitions (DE)**

#### **DE-08**

**Summary comment: The definition of land disturbance includes "all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access," but it is not always clear whether land disturbance for road construction is counted in the acreage totals for Total Disturbed Area.**

**END**

*Summary response: The definition of land disturbance has been updated in the Cannabis Policy and General Order to clarify that access roads that are designed, constructed, and maintained, or are updated consistent with the Handbook for Forest, Ranch, and Rural Roads (Road Handbook), and that implement the interim and long term erosion prevention and soil stabilization measures contained in Attachment A, are not considered disturbed areas for the purpose of tier determination under the Cannabis General Order. Excluding access roads that are designed, constructed, and maintained, or updated consistent with the Road Handbook incentivizes BPTC measures and improves protection of water quality.* **END**

*Cannabis documents referenced: General Order Finding 8a; Policy & General Order Att A, Section 5, Disturbed Area Stabilization Plan; Staff Report, General WQ Certification, Dredge or Fill Materials, pg 34.*

#### **053.005**

Comment text: The definition of Land Disturbance (which includes cultivation areas) is so broad that a cultivator could be required to comply with the requirement to record weather forecasts and employ erosion control measures as mandated simply to conduct ongoing cultivation activities. This may not be the intent, but the regulations are so broadly written that they lend themselves to onerous interpretations at every turn. **END**

### **Flow requirements, narrative (FR)**

#### **FR-02**

**Summary comment: The forbearance period is too restrictive. The forbearance period doesn't take into consideration regional differences.** **END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The State Water Board had to develop a statewide Policy that could be put in effect by January 1, 2018. The tight time frame for policy development did not allow the State Water Board to develop regional forbearance periods. Instead, the State Water Board had to develop a forbearance period that would be protective statewide. A typical outdoor cannabis cultivation site requires the most water at the same time that the majority of the state's water bodies are in their lowest flow period (summer to fall). Accordingly, the most significant impacts from water diverted for cannabis cultivation occur during the dry season. Increased diversion during this period greatly affects the quantity and quality of water available, negatively impacts designated beneficial uses, and threatens the survival of endangered salmon, steelhead, and other aquatic life. In an effort to minimize the impacts that may occur from current and anticipated increased levels of cannabis cultivation, the Policy includes a forbearance period, during which water diversions for cannabis cultivation are prohibited.*

*To ensure protection of salmonid species from the adverse effects of diversions during low flow periods, diversions are not permitted during the late spring, summer, or fall months, when streamflow is especially important to anadromous salmonid populations. The wet season diversion period (diversion period) is therefore restricted to the period of higher flows, from as early as November 1 to March 31, when water is most available and impacts on fishery resources will be minimized. As the State Water Board begins to develop regional policies or makes updates to the interim Policy, forbearance periods may be adjusted as necessary to protect water quality and designated beneficial uses.*

*The Policy has been amended to address the possibility of disruption for existing cannabis cultivators. Cannabis cultivators enrolled under the cannabis orders adopted by the North Coast Regional Water Board and Central Valley Regional Water Board are not required to enroll in the statewide cannabis General Order until July 1, 2019. This grace period allows existing enrollees time to install the necessary storage to comply with the Policy's forbearance period.*

*END*

*Cannabis documents referenced:*

#### **074.006**

Comment text: The General Order Instream Flow Requirements provide that Cannabis Cultivators shall not divert surface water for cannabis cultivation activities any time from April 1 through October 31, unless water is diverted from storage in compliance with Narrative Flow Requirement 4.

We have two primary concerns with this requirement:

1. The requirement is a "one-size-fits-all" that does not appear to take into account local factors such as size of watershed, density of cannabis cultivation, size of cultivation, or the specific impacts of a given cultivation.
  2. The forbearance period should not apply to existing appropriative rights holders who seek to convert all or a portion of their existing agriculture to cannabis.
- END

#### **074.017**

Comment text: Applying the aggressive forbearance period universally will certainly provide important protections for fish and wildlife, yet such a rigid forbearance rule will also cause unnecessary significant economic hardship, including eliminating otherwise viable cultivation operations. It may also result in more negative impact to the environment. END

### **FR-03**

**Summary comment: CDFW should determine the forbearance period on a case by case basis END**

*Summary response: The California Department of Fish and Wildlife (CDFW) may, under its own authority, require a forbearance period that is consistent with or different than the forbearance requirements in the State Water Board's Policy based on its assessment of what is protective of fish and wildlife. The State Water Board, under its authority, has determined that a forbearance period is needed in order to develop a statewide policy that is protective of water quality and designated beneficial uses. The establishment of a forbearance period is common in the State Water Board's administration of water rights. Examples include forbearance requirements in water right permits and licenses, in response to a fully appropriated stream declaration, and as part of the Policy for Maintaining Instream Flows in Northern California Coastal Streams. As stated in the Policy, in the event of duplicate or conflicting requirements, the most stringent requirements shall apply. END*

*Cannabis documents referenced:*

#### **074.008**

Comment text: We recommend that the forbearance period not be written into regulations, but be determined on a case-by-case basis through CDFW consultation under the LSA program. END

### **WR-06**

**Summary comment: Cannabis should be treated like other agricultural crops and existing water rights should apply. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: Water Code Section 13149 directs the State Water Board to "adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. The principles and guidelines adopted under this section may include, but are not limited to, instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. The principles and guidelines may include requirements that apply to groundwater extractions where the board determines those requirements are reasonably necessary for purposes of this section." Additionally, Water Code Section 13149 states "The principles and guidelines, including the interim principles and guidelines, shall include measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation." The State Water Board must abide by the Water Code and is therefore unable to treat cannabis cultivation like other agriculture activities that use water diversions. In particular, the Legislature has expressly mandated that the State Water Board regulate cannabis cultivation in a specific and distinct from the requirements for traditional agriculture. See also response WD-01. END*

*Cannabis documents referenced: Water Code Section 13149*

#### 074.010

Comment text: Forcing a water right holder to institute forbearance on diversions for cannabis will also result in the absurd situation where they are entitled to continue to divert through low flow periods for purposes such as conventional crops or cattle but must forbear on the portion of their right that is used only for cannabis. If they choose not to cultivate, they could continue to divert the full amount of their right with no forbearance. END

#### 074.013

Comment text: We strongly recommend that pre-existing appropriative and pre-1914 rights be treated as exceptions to the forbearance rule. END

### Grandfather coverage (GR)

#### GR-01

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*

*END*

*Cannabis documents referenced:*

#### 053.001

Comment text: In some cases cultivators have made significant infrastructure improvements and may now have to make additional investments to redo key infrastructure. An y cultivator currently enrolled with the North Coast Regional Water Quality Control Board must be allowed the option to continue to work with the Regional Board or at least have their property plans "grandfathered in" and deemed to be in compliance. END

#### GR-02

**Summary comment: North Coast cultivators have been encouraged to get to the "front of the line" with regulatory planning and permitting. Over the past two years, investment has been made in property-wide plans in consultation with professionals and agency staff. The new statewide Order needs to have a mechanism for incorporating farms already enrolled in the Regional Order and must allow farmers to continue operating with their established Water Resources Protection Plans and timelines for remediation.**

**END**



## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Summary response: The Cannabis Policy and General Order have a process for existing enrollees to transition to the General Order. Existing enrollees are allowed to continue operating under their existing authorization until July 1, 2019. They may transition earlier if they prefer.

The Cannabis General Order requires a Site Management Plan, which is a report similar to the Water Resource Protection Plan that is required by the North Coast Regional Water Board Conditional Waiver of WDRs. Development of the Site Management Plan should involve relatively minor revision to the Water Resource Protection Plan to comply with the Cannabis General Order.

If at the time of transitioning coverage to the Cannabis General Order, the cultivators with an existing Water Resources Protection Plan have not completed its remediation work, the cultivators should submit the Site Management Plan (which should be very similar to their Water Resources Protection Plans) and include any previously agreed upon schedule for site improvements. Because the Regional Water Board previously approved the schedule, the update should be a relative minor process. END

Cannabis documents referenced: Policy Section 5 Site Management Plan pg 69; Order Attachment D.

#### 074.002

Comment text: The existing Order in the North Coast region is adequate for protecting water resources. North Coast cultivators have been encouraged to get to the "front of the line" with regulatory planning and permitting. Over the past two years, investment has been made in property-wide plans in consultation with professionals and agency staff. The State Order disregards these plans and investments and resets the standards without regard to the agreements already in place. The new State Order needs to have a mechanism for incorporating farms already enrolled in the Regional Order and must allow farmers to continue operating with their established Water Resources Protection Plans and timelines for remediation. END

### Regulatory structure (RS)

#### RS-16

**Summary comment: The effect of the Policy will be to force most cultivators to remain in the black market because legacy and current issues concerning water and environment identified in the policy remain unchanged. Approving regulations that disregard previous compliance activities and replaces them with new and extensive requirements, the State Water Board is inadvertently encouraging the black market and hence the continuation of environmental degradation. (26.006,74.003) END**

Summary response: California Water Code section 13263 requires WDRs to implement any applicable water quality control plan (basin plan). The North Coast Regional Water Board has adopted basin plan amendments that address legacy issues, therefore they must be addressed for cultivators within the North Coast Region

The State Water Board modeled the statewide Cannabis General Order on the North Coast and Central Valley Regional Water Board orders. The Cannabis General Order does not disregard the previous compliance efforts. It includes a compliance schedule and allows for a site specific compliance schedule for those sites with longer term implementation plans. Because the North Coast Regional Water Board approved the previous compliance plans, there is no reason to believe they would not renew the existing agreements.

The Cannabis Policy and General Order only address legal cannabis cultivation activities. Black market or illegal cultivation activities are issues for law enforcement.

END

Cannabis documents referenced:

#### 074.003

Comment text: If cultivators don't find a way to adapt to the new system they will remain in the black market with attendant crime, environmental problems, and lack of tax base. By approving regulations that disregard previous compliance activities and replaces them with new and extensive requirements, the State Water Board is inadvertently encouraging the black market and hence the continuation of environmental degradation. END

#### RS-17

**Summary comment: The proposed regulations mandate duplicative and unnecessary actions. For example, instead of requiring cultivators to apply for and obtain a Lake and Streambed Alteration Agreement (LSA Agreement) from the California Department of Fish and Wildlife (CDFW) if applicable, every cultivator is mandated "to consult with CDFW to determine if a [LSA Agreement] is needed...." However, it is my understanding that CDFW has no mechanism for such a consultation. As a result, it is my understanding that CDFW requires any cultivator seeking to comply with the required mandate to apply for a LSA Agreement whether one is needed or not. This results in unnecessary consumption of time and expense for both the cultivator and the agencies. (53.004). END**

Summary response: The State Water Board considers an application for a LSA Agreement to be consultation. END

Cannabis documents referenced:

#### 053.004

Comment text: The proposed regulations mandate duplicative and unnecessary actions. For example, instead of requiring cultivators to apply for and obtain a Lake and Streambed Alteration Agreement (LSA Agreement) from the California Department of Fish and Wildlife (CDFW) if applicable, every cultivator is mandated "to consult with CDFW to determine if a [LSA Agreement] is needed...." However, it is my understanding that CDFW has no mechanism for such a consultation. As a result, it is my understanding that CDFW requires any cultivator seeking to comply with the required mandate to apply for a LSA Agreement whether one is needed or not. This results in unnecessary consumption of time and expense for both the cultivator and the agencies. END

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**RS-24**

**Summary comment: If the State of California is to benefit from cannabis cultivators being responsible for cleaning up past impacts from timber harvest, ranching, mining, and other industries, with small farms that are at the bottom end of the Tier designation, they will need reasonable timelines, an easy process that can be addressed by farmer's themselves (without the high cost of hiring professionals), and simple forms and procedures. This is in the best interest of the public trust as well as the region's economic stability. (74.004) END**

Summary response: The legacy requirement is imposed upon cultivators in the North Coast Region because the North Coast Regional Water Board adopted basin plan amendments that require it. California Water Code Section 13263(a) requires waste discharge requirements to implement any relevant water quality control plan (basin plan). The North Coast Region is home to numerous threatened and endangered species that are sensitive to discharges of excessive sediment, temperature fluctuations, and reduction of suitable habitat. The migration, spawning, reproduction, and early development of cold water fish such as salmon and trout species, some of which are listed as threatened under the Federal Endangered Species Act, are impacted in the North Coast Region due to water quality impairments and other conditions.

The North Coast Region has adopted policies to support restoration efforts and to attain or maintain water quality objectives. The General Order is consistent with the Basin Plan for the North Coast Region, the Temperature Implementation Policy, and the Sediment TMDL Implementation Policy by requiring all dischargers that are landowners of a cultivation site in the North Coast Region to develop Site Management Plans that identify compliance with best practicable treatment or control measures property-wide, including discharges from legacy activities (e.g., former timber harvest, road building, mining, etc.) at the site.

The Cannabis General Order requires applicants that will not be able to comply with Order requirements by November 15 of each year to submit a schedule for complying to the Regional Water Board. For any previously-established and agree-upon compliance schedules for applicants in the North Coast or Central Valley Regional Water Boards, the Regional Water Boards will likely maintain the same compliance schedule. Additionally, applicants that are currently enrolled in the North Coast Regional Water Board's Conditional Waiver of WDRs or the Central Valley Regional Water Board's General WDRs will not be required to enroll under the Cannabis General Order until July 2019.

Use of qualified professionals ensures that work is performed by qualified individuals. This is consistent with the California Business and Professions Code, which requires technical reports that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, to be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. See the definition of qualified professional in the Cannabis Policy and General Order Attachment A for a list of other professionals that may supervise technical report preparation.

END

Cannabis documents referenced:

**074.004**

Comment text: If the State of California is to benefit from cannabis farmers being responsible for cleaning up past impacts from timber harvest, ranching, mining, and other industries, with small farms that are at the bottom end of the Tier designation, they will need reasonable timelines, an easy process that can be addressed by farmer's themselves (without the high cost of hiring professionals), and simple forms and procedures. This is in the best interest of the public trust as well as the region's economic stability. END

**074.005**

Comment text: a)Allow each region to develop its own program or opt to use the new State Order. Thus the North Coast Region may use their existing Order and cannabis farmers can continue on their compliance track, or

b)Allow farmers that have enrolled with a Regional Board prior to the start of the State Order to continue to work under the existing order, and thus be "grandfathered in".

END

**Setbacks (SB)**

**SB-01**

**Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END*

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Cannabis documents referenced:

#### 053.003

Comment text: The minimum setbacks from riparian zones fail to take into account any site specific conditions or erosion control measures that may be effectively utilized. There are innumerable instances where agricultural operations exist adjacent to conventional agriculture without any documented significant environmental impact. If the proposed setbacks were to be applied to conventional agriculture, many thousands of acres now devoted to production of food and fiber would no longer be available for ag production. END

#### 074.014

Comment text: While the riparian corridor minimums are protective, and there is a process for a compliance schedule for achieving the minimums, there is no process for variance which would allow for alternative setback if warranted (e.g., hydrologic divides, dry farming, long established land uses). END

### Tribal, cultural (TC)

#### TC-06

**Summary comment: First of all DWR is not a responsible or trustee agency with regards to cultural resources. Again, "The purpose of the Cannabis Cultivation Policy (Policy) is to ensure that the diversion of water and discharge of waste associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs." Secondly, to prohibit any cultivation activities within 600 feet of an identified tribal cultural resource may not be necessary or even recommended by a qualified archaeologist or local Tribal Historic Preservation Officer (THPO). Finally, the cultivator should not be solely responsible for identifying any tribal cultural resource sites within the cannabis cultivation area. Again, the identification and preservation of cultural resources is not a responsibility of DWR. The regulation should be removed from DWR's proposed regulations. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: Business and Professions Code section 26060 mandates that the State Water Board is the agency responsible for establishing conditions to ensure that individual and cumulative effects of water diversion and discharge associated with cannabis cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability; ensure that cultivation does not negatively impact springs, riparian habitat, wetlands, or aquatic habitat; and otherwise protect fish, wildlife, fish and wildlife habitat, and water quality. (See Bus. & Prof. Code, § 26060, subd. (f); id., § 26060.1, subd. (b); see also generally Wat. Code, § 13149.) In this capacity, the State Water Board has broad authority to mitigate and avoid significant effects on the environment caused by the Cannabis Policy, General Order, Small Irrigation Use Registration program, and activities they authorize, including significant effects on tribal cultural resources. (Pub. Res. Code, § 21004; id., §§ 21084.2, 21084.3; Cal. Code Regs., tit. 14, §§ 15040–15041.) In addition, the Board has broad authority to prevent unlawful diversion, (Wat. Code, § 1052) and to prevent the waste and unreasonable use of water, (Cal. Const., Art. X, § 2; Wat. Code, § 275).*

*Water Code section 13149 grants the State Water Board broad authority to protect the environment from the negative impacts of cannabis cultivation. The statute provides authority to adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. (Wat. Code, § 13149, subd. (a)(1)(A).) This authority comes with a mandate to adopt measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation. (Id., subd. (a)(2).) The statute provides examples of measures that may be adopted, including instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. (Id., subd. (a)(1)(A).) However, the statute is clear that the State Water Board's authority is "not limited to" these examples, (ibid.), affirming that the State Water Board's authority is not limited to flow- or diversion-related measures.*

*California law is clear that an activity that causes a substantial adverse change to the significance of a tribal cultural resource is an activity that has a significant effect on the environment. (Pub. Res. Code, § 21084.2.) California law mandates that public agencies avoid damaging effects to tribal cultural resources. (Id., § 21084.3, subd. (a).) Cannabis cultivation activities and associated diversions in areas where cannabis cultivation may have the potential to substantially affect instream flows, typically undeveloped or lightly-developed rural areas, have the potential to significantly affect the environment by causing a substantial adverse change in the significance of tribal cultural resources, including sacred places, previously undisturbed archeological sites, and previously undisturbed human remains. These impacts are caused by diversion, construction of diversion works, and activities, like cultivation, that would not occur but for the ability to divert.*

*For the foregoing reasons, the cultural resources protection terms are reasonably necessary for the purposes of section 13149 of the Water Code.*

*The purpose of the 600 foot setback for identified tribal cultural resource sites is to prevent cannabis cultivation from causing a substantial adverse change in the significance of a tribal cultural resource. (See Pub. Resources Code, § 21084.2.) The State Water Board solicited comments from hundreds of California Native American tribes and performed numerous consultations with tribes in developing tribal cultural resource protection terms for the Cannabis Policy. Cannabis Cultivation near tribal cultural resource sites is highly controversial based on the comments received. The general view was that setbacks were necessary to prevent a substantial adverse change in the significance of tribal cultural resources. Some California Native American tribes requested a minimum buffer of 1,000 feet or more. The State Water Board has determined, based on evidence in the record, that a 600 foot setback is sufficient to prevent substantial adverse changes, is reasonable, and is an appropriate "floor" of protection for a rule of statewide application. The 600 foot setback is also consistent with Humboldt County's cannabis cultivation ordinance, (see Humboldt County Code, § 55.4.10, subd. (c)).*

*Cannabis cultivators are frequently present within the cultivation area, are familiar with their operations, undertake site development and cultivation activities, and are generally responsible for complying with applicable laws, regulations, and requirements. Therefore, cannabis cultivators are well situated to identify tribal cultural resource sites within the cultivation area. Accordingly, requiring that cannabis cultivators do so to comply with tribal cultural resource protection terms in the Cannabis Policy is reasonable.*

END

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Cannabis documents referenced:

**053.006**

Comment text: Likewise, as written, the regulations require a records search for any potential Native American archeological or cultural resources prior to any land disturbance activities for "new or expanded cannabis activities." As written, it makes no difference if the site is already utilized for any other agricultural activity. END

#### Water diversion, storage (WS)

**FR-01**

**Summary comment: The Policy should implement a grace period to allow for the installation of storage facilities END**

*Summary response: The Policy has been updated to provide a waiver of the 2018 surface water dry season forbearance period (April 1, 2018 through October 31, 2018), with certain conditions, so that cannabis cultivators may divert during this period in a manner consistent with their water right or claim of right. Cultivators that make use of this waiver are required to: file for a Cannabis Small Irrigation Use Registration (SIUR) or submit an application for an appropriate water right permit to prepare for potential curtailment during the dry season of 2018 (triggered by Aquatic Base Flow Numeric Instream Flow Requirement); and install storage as soon as possible after storage has been authorized following the conclusion of the winter period. All water must be diverted under a valid basis of right and all cannabis cultivators will be subject to the aquatic base flow requirements put forth in the Policy. Further, all storage shall be installed in accordance with the Policy and General Order, which include requirements to protect water quality and beneficial uses, including plan development and approval prior to land disturbance, implementation of best practicable treatment controls, and no work during the winter period. END*

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Cannabis documents referenced:

**074.007**

Comment text: Many cultivators cannot install storage facilities sufficient to sustain cultivation for such an extended period (April 1 to November). Further, in many cases, the work to install storage facilities will have a greater negative impact on the environment than would the diversion. END

#### Water rights (WR)

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

#### WR-06

**Summary comment: Cannabis should be treated like other agricultural crops and existing water rights should apply. END**

*Summary response: Water Code Section 13149 directs the State Water Board to "adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. The principles and guidelines adopted under this section may include, but are not limited to, instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. The principles and guidelines may include requirements that apply to groundwater extractions where the board determines those requirements are reasonably necessary for purposes of this section." Additionally, Water Code Section 13149 states "The principles and guidelines, including the interim principles and guidelines, shall include measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation." The State Water Board must abide by the Water Code and is therefore unable to treat cannabis cultivation like other agriculture activities that use water diversions. In particular, the Legislature has expressly mandated that the State Water Board regulate cannabis cultivation in a specific and distinct from the requirements for traditional agriculture. See also response WD-01. END*

*Cannabis documents referenced: Water Code Section 13149*

#### 053.002

Comment text: If a water resource may be legally utilized to support a vineyard, orchard or vegetable garden, it ought to be available for any other legal use, including cannabis cultivation. END

#### 074.009

Comment text: This rule applies to both new SIURs, pre-existing appropriative and pre-1914 rights. Applying this rule to pre-existing rights holders is unreasonable and will cause unnecessary economic hardship, including eliminating otherwise viable cultivation operations. It may also result in negative impacts to the environment. END

#### 074.011

Comment text: Many water rights in the state are designed to satisfy irrigation needs during the summer months. The forbearance period would make these rights unusable for cannabis, essentially depriving cultivators of a property right with no scientifically shown public trust benefit.

Would-be cultivators with pre-existing rights must construct storage ponds and potentially seek additional water rights with the resulting financial and environmental impacts without actually addressing the Staff Report's concerns regarding increased diversions.  
END

#### 074.012

Comment text: As a legal crop, cannabis irrigation is a reasonable and beneficial use of water. Treating it differently from other crops in the context of water rights, where its cultivation will not increase the demand on water resources, is arbitrary and capricious, will have significant economic impacts on both property owners and government, and will not provide environmental benefits.  
END

#### Winterization (WI)

#### WI-03

**Summary comment: An additional example of the pervasive overreach of the proposed regulations is the prohibition on synthetic netting materials "to minimize the risk of ensnaring and strangling wildlife." The goal is laudable, but the regulation is proposed in the apparent absence of any evidence that it is necessary. It is also more than slightly ironic that numerous state agencies and their contractors and grantees, most likely including the State Water Resources Control Board, utilize synthetic netting materials. END**

*Summary response: Trash discarded on land frequently makes its way into surface waterbodies and eventually the ocean, as rainstorms wash it into gutters and storm drains. Trash is a significant pollutant of California's waters that adversely affects beneficial uses, including those that support aquatic life, wildlife, or public health. In addition, because plastic degrades very slowly, plastic trash can be a significant entanglement, strangulation, and ingestion hazard for wildlife. On April 7, 2015, the State Water Board adopted Resolution 2015-0019, addressing trash discharges to ocean waters; on June 1, 2017 the State Water Board Executive Director issued California Water Code section 13383 orders to Caltrans and small municipal separate storm sewer systems (MS4s) addressing trash requirements. Future orders adopted by the State and Regional Water Boards are anticipated to contain significant trash control requirements.*

*In accordance with California Water Code section 13149, the State Water Board, in consultation with the California Department of Fish and Wildlife (CDFW), is required to adopt principles and guidelines that include measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation.*

*From the 2015-2016 CDFW Commercial Digest, California Fishing Regulations (pg 5, column 2, paragraph 2): Discarded trash that enters the marine environment needlessly kill marine wildlife. Floating plastic rope and line also foul boat propellers. In 1988, an international treaty, MARPOL, Annex V, took effect, which bans the dumping of plastic in navigable waters, such as rivers, lakes, canals, streams, bays, and the ocean. It is also a California offense to litter from shore.*

*The requirements in the Cannabis General Order are consistent with the trash control measures described above. END*

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

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Cannabis documents referenced: Att A: Sec 1, pg 14, Item 23.

CDFW, Commercial Digest, California Fishing Regulations, 2015 – 2016.

**053.007**

Comment text: An additional example of the pervasive overreach of the proposed regulations is the prohibition on synthetic netting materials "to minimize the risk of ensnaring and strangling wildlife." The goal is laudable, but the regulation is proposed in the apparent absence of any evidence that it is necessary. It is also more than slightly ironic that numerous state agencies and their contractors and grantees, most likely including the State Water Resources Control Board, utilize synthetic netting materials. END

**DeGraff, Ernie**

**Enforcement (EN)**

**EN-11**

**Summary comment: Enforcement needs to be an important aspect of the Policy END**

*Summary response: The State Water Board recognizes that enforcement of both legal and illegal grows is part of any successful cannabis regulatory program. The Water Boards have a variety of enforcement tools. The Policy may be implemented directly per Water Code section 1847. The Policy Requirements will also be implemented through the Cannabis General Order, the Cannabis Small Irrigation Use Registration, General Water Quality Certification for Cannabis Cultivation Activities, and the California Department of Food and Agriculture's (CDFA) commercial cannabis licenses. The Policy includes a summary of the types of enforcement actions that may be taken by the Water Boards. The Water Boards will make every effort to coordinate any enforcement action among its various divisions, offices, and regions and not initiate duplicative enforcement on the same violations. The Water Boards will coordinate enforcement with other agencies, including CDFA and the California Department of Fish and Wildlife (CDFW) where appropriate.*

*In addition to the Water Boards' dedicated enforcement staff, legislation directed the Water Boards and CDFW to expand the scope of the Watershed Enforcement Team from its initial North Coast/Central Valley focus to address cannabis cultivation activities statewide. In addition to pursuing enforcement related to cannabis cultivation, this team also provides public outreach and education, performs site inspections, and responds to complaints. END*

*Cannabis documents referenced: CCP, pg. 20*

**001.001**

Comment text: I fully support your regulation of all types of water sources and streams where water extraction from these sources for cannabis grows takes place. In addition to your proposed regulations of water extractions, please include enforcement regulations and funding to implement on-the-ground enforcement. Without adequate enforcement of your regulations, the regulations are meaningless. The illegal cannabis grows far outnumber the "permitted" grows by the hundreds, if not thousands. Please make note of these illegal grows in your Report and provide means to stop these grows and penalties for breaking the laws and regulations. I think enforcement of the laws and regulations will be your biggest challenge, so make sure that is stressed in your implementation plan. END

**Down River Consulting**

**Cost of compliance (CS)**

**CS-01**

**Summary comment: The proposed requirements are too expensive to implement, especially for smaller farms. END**

*Summary response: The State Water Board's statutory mandate is protection of water quality. However, the State Water Board is aware of the costs of compliance imposed on cultivators and balances the requirements with the need to protect water quality. The cost of compliance is a function of the site specific conditions. Sites located a suitable distance from a water body on relatively level terrain are not required to implement a large number of BPTC measures. Sites located in close proximity to a water body or on a sloped property, are a higher threat to water quality and therefore are subject to additional BPTC measure requirements. Similarly, larger cultivation sites are an inherently higher threat to water quality and have additional requirements imposed upon them. For those facilities that cannot comply with the applicable BPTC measures, a schedule to achieve compliance can be obtained from the Regional Water Board. END*

*Cannabis documents referenced: Policy: pg 13, par 2, Item c; Policy: pg 15, par 4; Order: pg 3, Finding 7.c; Order: pg 5, Finding 13; Policy: pg 17, par 2; Policy: pg 22, par 5; Att A: Sec 1, pg 15, Item 31; Att A: Sec 1, pg 16, Item 36, fn 3; Att A: Sec 5, pg 70, par 6; Staff rpt: pg 71, par 4; Staff rpt: pg 72, par 3; Order: pg 14, Finding 42.a; Order: pg 21, C.3.a; Order: Att D, pg D-3, Item 5.4; Order: Att D, pg D-4, par 2; Order: Att D, pg D-9, par 2; Order: Att D, pg D-10, Item 6.1*

**015.001**

Comment text: The requirements in the proposed SWRCB Cannabis General Order would impose significant additional expenses that could make my continued operation untenable. END

**CS-02**

**Summary comment: Review the requirement to use qualified professionals to determine if necessary considering the cost and burden of hiring specialists. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: Use of qualified professionals ensures that work is performed by qualified individuals. This is consistent with the California Business and Professions Code, which requires technical reports that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, to be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. See the definition of qualified professional in the Cannabis Policy and General Order Attachment A for a list of other professionals that may supervise technical report preparation.*

*The due date for certain technical reports has been removed from the Cannabis General Order to allow cannabis cultivators to submit the reports in accordance with their schedule for conducting cultivation and cultivation-related activities. Additionally, applicants that are currently enrolled in the North Coast Regional Water Board's Conditional Waiver of WDRs or the Central Valley Regional Water Board's General WDRs will not be required to enroll under the Cannabis General Order until July 2019. END*

*Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Att A: Sec 1, pg 9, Item 5; Att A: Sec 2, pg 20, Item 5; Att A: Sec 2, pg 21, Items 8-9; Att A: Sec 2, pg 22, Items 13-14; Att A: Sec 2, pg 23, Item 23; Att A: Sec 2, pg 24, Items 26-27, 29-31; Att A: Sec 2, pg 26, Item 41; Att A: Sec 2, pg 28, Item 48; Att A: Sec 2, pg 29, Item 56; Order: Att D, pg D-4 through D-5 & D-9 through D-10*

#### 030.002

Comment text: The second is a lack of licensed professionals. I know this gentlemen over here, or I believe where Erin mentioned earlier, that was some of the comments. And a lot of the engineers that we work with come from outside of the county and it is hard -- that would be a tough time line to meet on some of those reports. END

### Flow requirements, narrative (FR)

#### FR-01

**Summary comment: The Policy should implement a grace period to allow for the installation of storage facilities END**

*Summary response: The Policy has been updated to provide a waiver of the 2018 surface water dry season forbearance period (April 1, 2018 through October 31, 2018), with certain conditions, so that cannabis cultivators may divert during this period in a manner consistent with their water right or claim of right. Cultivators that make use of this waiver are required to: file for a Cannabis Small Irrigation Use Registration (SIUR) or submit an application for an appropriate water right permit to prepare for potential curtailment during the dry season of 2018 (triggered by Aquatic Base Flow Numeric Instream Flow Requirement); and install storage as soon as possible after storage has been authorized following the conclusion of the winter period. All water must be diverted under a valid basis of right and all cannabis cultivators will be subject to the aquatic base flow requirements put forth in the Policy. Further, all storage shall be installed in accordance with the Policy and General Order, which include requirements to protect water quality and beneficial uses, including plan development and approval prior to land disturbance, implementation of best practicable treatment controls, and no work during the winter period. END*

*Cannabis documents referenced:*

#### 030.001

Comment text: One is the forbearance period and allowing farmers to -- a little bit of time to come into compliance while they get their storage in place. END

### Grandfather coverage (GR)

#### GR-01

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*

*END*

*Cannabis documents referenced:*

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

#### 014.001

Comment text: I am enrolled with NCRWQCB order 2015-0023 which is supposed to be valid for five years and I have invested to become compliant with the conditions of that order. Please allow current enrollees to continue operating under the North Coast order until its expiration. END

#### 015.003

Comment text: It is important to note that while recent state legislation exempts the SWRCB Cannabis General Order from the requirements imposed by the California Environmental Quality Act, the NCRWQCB Order was implemented only after completing a thorough CEQA analysis including Notice & Comment. In light of that environmental review, I believe that the NCRWQCB Order is protective of water quality in the Region and should be continued for its intended 5-year duration. END

#### 030.003

Comment text: And the third comment was that a lot of people that have been enrolled in the North Coast Regional Order for -- they're on their second year have invested a lot of money, in some cases into six figures, to get into compliance with those setbacks and those requirements, and if there's any way to allow some of those early movers a little bit of allowance or grandfathering in on some of the things. END

### GR-05

**Summary comment: The Cannabis General Order requirements are redundant to water resource protections already contemplated by the NCRWQCB Order. END**

*Summary response: The Cannabis General Order requirements are largely based on the requirements from the existing Regional Water Board orders. As the Cannabis General Order is intended to supersede the existing Regional Water Board order or to remain in place once the existing Regional Water Board expires, the requirements within the Cannabis General Order are intended to reflect what is protective of water quality as adopted in the North Coast Regional Water Board order. END*

*Cannabis documents referenced: None.*

#### 015.002

Comment text: In many cases, these additional requirements are redundant to water resource protections already contemplated by the NCRWQCB Order. END

### Regulatory structure (RS)

#### RS-01

**Summary comment: SWRCB General Order should allow the Regional Boards more flexibility and deferment to implement locally appropriate solutions. Enrollees under a Regional Board order shall be allowed to continue until it expires. Allow each region to develop its own program or opt to use the new State Order. North Coast Region may use their existing Order and cannabis farmers can continue on their compliance track, or farmers that have enrolled in the Regional Board order shall be allowed to continue to work under existing conditions and thus be grandfathered in. Does the General Order allow Regional Boards to develop site-specific orders for those that do not fit into SWRCB General order?(15.004) (74.005) (77.002) (17.014) (18.004), (38.004). END**

*Summary response: The Cannabis General Order provides a transition period until July 1, 2019 for enrollees under the existing Regional Water Board orders. They may transition sooner if they prefer. Those cultivators that have initiated remedial activities at their facilities will not be penalized because the Cannabis General Order requires similar activities.*

*The Cannabis General Order does allow Regional Water Boards the alternative of preparing a region specific general order or site specific WDRs. However, California Water Code Sections 13146 and 13263 require that WDRs implement any applicable water quality control plan or policy. Any general order or site-specific order adopted by a Regional Water Board must be consistent with the requirements of the Cannabis Policy. Therefore, any region specific general order would be very similar to the Cannabis General Order. END*

*Cannabis documents referenced: CCP Staff Rpt pg. 28, GO 6b, pg. 2*

#### 015.004

Comment text: Ideally the SWRCB General Order should allow the Regional Board's to retain enough flexibility to implement locally appropriate solutions that are equally protective of water quality. At a minimum, I believe that current Enrollees under a Regional Order should be allowed to continue operating for the duration of the Regional Order. Thank you for your time and consideration. END

### Setbacks (SB)

#### SB-01



## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment:** *I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END*

*Summary response:* The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END

Cannabis documents referenced:

**030.004**

Comment text: Some of the setback limitations from surface waters, they've expanded that distance that needs to be -- that gardens need to be away in the new Order END

## Environmental Pollution Solutions

### Application for coverage (AP)

#### AP-01

**Summary comment:** *The land owner should be identified in the application and should also be required sign the application. END*

*Summary response:* The application has been designed to collect land owner information and contact information. Land owners will be named as responsible parties and will be notified when authorization to cultivate cannabis is provided to an applicant. The Cannabis Policy requires that cannabis cultivators not commit trespass and notes that nothing in the Policy "shall be construed to authorize cannabis cultivation activities on land not owned by the cannabis cultivator without the express written permission of the land owner." END

Cannabis documents referenced: Att A: Overview, pg 5, Item 12; Att A: Sec 1, pg 11, Item 16; Att A: Sec 1, pg 15, Item 35

**020.008**

Comment text: Due to Requirement 35, page 15, the land or property owner should be required to sign the initial enrollment document or NOI END

#### AP-15

**Summary comment:** *The Cannabis General Order includes a Notice of Termination Form but does not include a Notice of Intent form. END*

*Summary response:* Applicants who are registering or enrolling under the Cannabis General Order are required to apply for coverage using an online application system. The online application system will be available after the Cannabis Policy and Cannabis General Order are adopted. END

Cannabis documents referenced: Policy: pg 17, par 1; Order: pg 12, F41.a-41.e; Order: pg 16, B.1-B.2

**020.020**

Comment text: Attachment C NOT form is provided, but not a NOI form – seems the NOI form is most important. END

## Cost of compliance (CS)

### CS-09

**Summary comment:** *There are many areas of California that do not have internet or cell phone coverage and, thus, may not be able to comply with the requirement to monitor daily weather forecasts. END*

*Summary response:* The Cannabis Policy and Cannabis General Order allow cannabis cultivators to refer to the local television news or radio broadcast for weather forecasts. END

Cannabis documents referenced: Att A: Sec 1, pg 10, Item 7, fn 5

**020.006**

Comment text: Requirement 7, page 10, requires daily weather forecast monitoring, yet many areas of California do not have internet or cell phone coverage. END

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

#### Definitions (DE)

##### DE-09

**Summary comment: Cannabis cultivator and Discharger seem to refer to the same entity, but are used throughout the document apparently interchangeably. END**

*Summary response: Both terms are defined separately within the documents. "Cannabis Cultivator" can have the same meaning as "Discharger" when used within the context of compliance with the requirements related to waste discharge, which is regulated under the Cannabis General Order. END*

*Cannabis documents referenced: Policy & General Order Att A, Definitions 6, 9; Policy Att B Glossary of Terms pg 2, 3; Staff Report App 3 pg 2, 3*

##### 020.004

Comment text: Cannabis cultivator and Discharger seem to refer to the same entity, but are used throughout the document apparently interchangeably. END

#### Monitoring, reporting (MR)

##### MR-03

**Summary comment: A QSP is a specialized certification for the statewide storm water construction general permit (CGP). The QSP is certified to perform field inspections for a project with a SWPPP written by a QSD. The QSD writes the SWPPP, not the QSP. The QSP and QSD would only be applicable certifications for the CGP. Other prerequisite certifications might be more applicable such as CPESC, CPSWQ, CPISM. Also consider adding certified wildlife biologist. END**

*Summary response: The Cannabis Policy and General Order do not mention QSP or QSD, instead listing qualified storm water practitioners. Individuals qualified to develop SWPPPs are familiar with storm water best management practices for designing sediment control. Attachment A has been revised to clarify requirements for qualified professionals. END*

*Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Policy: Att B, pg 8, par 2; Staff rpt: App 3, pg 8, par 2*

##### 020.010

Comment text: A Qualified Storm Water Pollution Prevention Plan Practitioner or QSP is a specialized certification for the State-wide Construction General Permit. The QSP is certified to perform field inspections for a project with a SWPPP written by a QSD or Qualified Storm Water Pollution Prevention Plan Developer. The QSD writes the CGP SWPPP, not the QSP. The QSP and QSD would only be applicable certifications for the CGP. Other prerequisite certifications might be more applicable such CPESC, CPSWQ, CPISM. This might be an appropriate place for a certified wildlife biologist. END

##### MR-04

**Summary comment: The Cannabis Policy and Cannabis General Order should include requirements to**

**-use a licensed arborist when evaluating trees or conducting tree work;**

**-include mention of a C-57 licensed well driller for installation of wells**

**-include general engineering contractor's A license and the American Institute of Hydrology license for professional hydrologist**

**-require that stream crossing and culvert designs be prepared by experienced fluvial geomorphologists END**

*Summary response: Attachment A has been revised to clarify contractor requirements. In California, anyone who contracts to perform work that is valued at \$500 or more in combined labor and material costs must hold a current, valid license from the California Contractors' State License Board. Licensed contractors are classified as general engineering, general building, or specialty contractors.*

*•General engineering ("A" contractors) principally work with fixed works that require specialized engineering knowledge and skill. A general engineering contractor may perform the work or hire specialty contractors for specific tasks.*

*•General building ("B" contractors) work on existing or new structures that require at least two unrelated types of work. In some cases a general building contractor can perform the work, but often must hire subcontractors with specialty licenses.*

*•Specialty contractors ("C" contractors) are those who specialize in a particular skill or trade. Specialty or subcontractors usually are hired to perform a single task.*

*Because there is significant overlap between specialty contractor skills, more than one specialty contractor may be licensed to contract for a project.*

*Arborists and well drillers are specialty contractors and are subject to the state contracting laws. A general engineering "A" contractor's license has been added to the definitions. Professional hydrologist and fluvial geomorphologists are not recognized license types under the California Business and Professions code. However, a licensed civil engineer or professional geologist may have the American Institute of Hydrology endorsement and may demonstrate additional expertise related to the endorsement. END*

*Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Policy: Att B, pg 8, par 2; Staff rpt: App 3, pg 8, par 2*

##### 020.012

Comment text: Section 3, Requirement 35, when evaluating trees or conducting tree work, mention of licensed arborist is needed. END

##### 020.013

Comment text: Section 2, Requirement 66, Page 30, although reference to DWR Bulletins 74-90 and 74-81 is provided, no mention of a C-57 licensed well driller is mentioned END

##### MR-05

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: The Monitoring and Reporting Program of the Cannabis General Order does not state where storm water samples must be collected or how monitoring points must be established. END**

*Summary response: The Monitoring and Reporting Program in the Cannabis General Order includes a requirement that all samples collected be representative of the volume and nature of the discharge or matrix of material sampled. The footnote under the Storm Water Monitoring section indicates additional samples may be required to adequately characterize the discharge from disturbed areas. Therefore, the cultivator must ensure that the sample locations are appropriate to characterize the storm water quality. Because the Cannabis General Order is applicable to thousands of sites throughout the state, specific monitoring locations cannot be specified in the Monitoring and Reporting Program. Cannabis cultivators establish their own monitoring locations to ensure that monitoring locations comply with the requirements in the Monitoring and Reporting Program. END*

*Cannabis documents referenced: Order: Att B, pg B-2, par 2*

**020.018**

Comment text: MRP does not state where storm water samples must be collected. Does not state how the monitoring points must be established. Recent history with the IGP indicates that Water boards have difficulty collating, filing and evaluating hard copy reports. END

#### **MR-06**

**Summary comment: The Monitoring and Reporting Program of the Cannabis General Order does not provide guidance regarding the turbidity or pH calibrated device. END**

*Summary response: Because there is a large number of products to measure turbidity and/or pH, providing guidance for a device is impossible. However, the manufacturer does provide such guidance. The Monitoring and Reporting Program requires that the devices be used consistent with that guidance. Field test instruments (such as those used to test pH, dissolved oxygen, and electrical conductivity) may be used provided that they are used by a California Environmental Laboratory Program certified laboratory or:*

- 1.The user is trained in proper use and maintenance of the instruments;*
- 2.The instruments are field calibrated prior to monitoring events at the frequency recommended by the manufacturer;*
- 3.Instruments are serviced by the manufacturer or authorized representative at the recommended frequency; and*
- 4.Field calibration reports are maintained and available for at least three years.*

*END*

*Cannabis documents referenced: Order: Att B, pg B-2, par 3*

**020.019**

Comment text: MRP does not provide any guidance on the turbidity or pH calibrated device. END

#### **MR-07**

**Summary comment: Attachment D of the Cannabis General Order does not include guidance for developing a site drainage plan that includes monitoring and sampling discussions. END**

*Summary response: Attachment D provides guidance on the contents of technical reports. The site erosion and sediment control plan and the disturbed area stabilization plan must be prepared under the supervision of an appropriately qualified professional. The professional will recommend the monitoring locations. The samples collected must be analyzed and reported consistent with the monitoring and reporting program. END*

*Cannabis documents referenced: Att A: Sec 1, pg 14, Item 30; Att A: Sec 1, pg 15, Item 32; Att A: Sec 2, pg 19, Item 2; Att A: Sec 5, pg 68, Table; Att A: Sec 5, pg 68, par 4-5; Att A: Sec 5, pg 69, par 2; Att A: Sec 5, pg 70, par 2; Staff rpt: pg 38, par 4; Order: pg 12, F40; Order: pg 16, Table 2; Order: pg 17, C.1.b; Order: pg 18, C.1.c; Order: Att D, pg D-4 through D-5, D-9 through D-10*

**020.021**

Comment text: Attachment D does not have guidance on developing a site drainage plan that would include monitoring points, discussion or run-on and other critical aspects of sampling. END

#### **Outreach, public notification (OP)**

##### **OP-02**

**Summary comment: There needs to be training and perhaps certifications such as with the CGP and IGP to assist Dischargers with compliance. END**

*Summary response: The State Water Board does provide storm water training events. See the State Water Board's storm water home page for information on how to obtain a storm water certification.*

*It is noted that the Site Management Plan does not require a qualified professional if the cannabis cultivator is capable of producing the document. That is the only report that is required of all Tier 1 and 2 cultivators.*

*Depending on site conditions, some cultivators will have to submit a Site Erosion and Sediment Control Plan, or a Disturbed Area Stabilization Plan. Both of those documents must be prepared by a qualified professional. The level of certification/registration is dependant on the needs of the facility. For relatively simple situations, a qualified storm water pollution prevention plan developer will be adequate. For sites that require civil engineering design, a licensed civil engineer is required by law. END*

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

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Cannabis documents referenced: None

**020.001**

Comment text: There needs to be training and perhaps certifications such as with the CGP and IGP – the Discharges will struggle with compliance and that should be the number one priority. END

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**Regulatory structure (RS)**

**RS-05**

**Summary comment: Where is the time term of the General Order stated? (20.002) END**

*Summary response: There is no expiration term of State Water Board's proposed General Order (WDRs). In accordance with the State Water Board's Administrative Procedures Manual, WDRs are scheduled for update but do not expire. The concept of a term limit applies to a waiver of WDRs which by law expire five years after adoption. The State Water Board will review the General Order periodically and will revise requirements when necessary. END*

Cannabis documents referenced: GO, Provision 2g, pg. 19

**020.002**

Comment text: I did not see where the time term of the General Order was stated, which is usually five years END

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**RS-06**

**Summary comment: This very complex permit will raise compliance challenges and the path to compliance in this permit is very difficult. (20.003 and 20.005) END**

*Summary response: The Cannabis Policy and General Order are large documents and may appear to be overwhelming for people unfamiliar with the regulatory environment. The complexity of the documents reflects the complexity of the industry and the diversity of physical settings and impacts that can be associated with cannabis cultivation in California. Cultivators can contact Regional Water Board staff for clarifications on requirements as needed. In addition, the Cannabis General Order allows cultivators to establish a third-party organization to represent their interests before the Regional Water Board. Protection of water quality will take effort from all involved parties, and cannabis cultivators bear responsibility for familiarizing themselves with the requirements that apply to them. END*

Cannabis documents referenced:

**020.003**

Comment text: This General Permit does not appear to be a layman's document. It can be compared to the Industrial General Permit or the Construction General Permit, where specific certification programs, permit-specific were developed due to the complexity and comprehensiveness of the permit and ability to comply. This is a very complex document and it be evaluated on how easily a Discharger will be able to comply. END

**020.005**

Comment text: The cannabis cultivator is expected to comply with all Water Board water quality control plans and policies. Professionals are challenged to assist Dischargers with these requirements. Yet, this Order will require the Discharger to attend to these requirements. It is always the Dischargers responsibility, but the path to compliance for this permit is very difficult. END

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**Road building, land disturbance, slope stability (RB)**

**RB-06**

**Summary comment: Attachment A, Section 2, Requirement 2, Page 19. More emphasis should be placed on local jurisdictional restrictions for development on slopes. Some counties have restrictions as low as 15% and if the slope is steeper, a grading permit must be obtained. END**

*Summary response: In addition to the requirements of the Cannabis Policy and Cannabis General Order, cannabis cultivators must comply with all applicable local laws, regulations, and permitting requirements, including city, county, and local regulations, ordinances, and licensing related to cannabis cultivation, grading, construction, and building. END*

Cannabis documents referenced: Att A: Sec 1, pg 8, Item 1; Sec 2, pg 19, Item 2.

**020.011**

Comment text: Attachment A, Section 2, Requirement 2, Page 19. More emphasis should be placed on local jurisdictional restrictions for development on slopes. Some counties have restrictions as low as 15% and if exceeding, but obtain a grading permit. END

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**Setbacks (SB)**

**SB-04**

**Summary comment: Requirement 17 and 18, Pages 11 and 12, is buried in the requirements is a setback of 600 feet from Tribal lands and Tribal Cultural Resources. All setbacks should be listed together END**

*Summary response: State Water Board staff feel that it is more appropriate to include all requirements related to the protection of Tribal Cultural Resources in the same area. END*

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

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Cannabis documents referenced:

**020.007**

Comment text: Requirement 17 and 18, Pages 11 and 12, is buried in the requirements is a setback of 600 feet from Tribal lands and Tribal Cultural Resources. All setbacks should be listed together  
END

**SB-05**

**Summary comment: Other waterbodies are listed immediately after Watercourse Classes I, II and III, yet omit Class IV. It is a bit confusing when compared with Term 26, Pages 6 and 7) Other watercourses. The point here is that watercourses and waterbodies are listed on the Table, but omit Class IV watercourses. On first look, I thought Class IV had minimum setbacks, but then do not. END**

*Summary response: The language in the Policy has been updated to clarify Class IV watercourses and their associated setback provisions. END*

Cannabis documents referenced:

**020.009**

Comment text: Other waterbodies are listed immediately after Watercourse Classes I, II and III, yet omit Class IV. It is a bit confusing when compared with Term 26, Pages 6 and 7) Other watercourses. The point here is that watercourses and waterbodies are listed on the Table, but omit Class IV watercourses. On first look, I thought Class IV had minimum setbacks, but then do not.  
END

**Water diversion, storage (WS)**

**WS-01**

**Summary comment: Requirement 75 seems to indicate that only fuel powered diversion pumps are allowed. Recommend updating to include solar, electric, gravity fed, and other pumps. END**

*Summary response: The language in the Policy will be updated to reflect that other types of pumps are allowed, and in some cases, even encouraged. END*

Cannabis documents referenced:

**020.014**

Comment text: Section 2, Requirement 75, Page 31 seems to state only use fuel powered diversion pumps. But, it is referring to the location of these type of pumps. No mention of battery powered or solar powered pumps. END

**WS-06**

**Summary comment: Was there a mention of recycled water usage? END**

*Summary response: Recycled water usage was not specifically mentioned in the Policy. Any use of recycled water must follow all applicable laws and regulations, including applicable requirements in the Policy and General Order. END*

Cannabis documents referenced:

**020.017**

Comment text: Was there a mention of recycled water usage? END

**WS-11**

**Summary comment: The order in which water bladders are discussed should be changed. First identify them and then state the secondary containment requirements. Pages 33 and 34. END**

*Summary response: The Cannabis Policy Attachment A has been modified to modify the order in which water bladders are discussed. END*

Cannabis documents referenced:

**020.015**

Comment text: The order in which water bladders are discussed should be changed. First identify them and then state the secondary containment requirements. Pages 33 and 34. END

**Water rights (WR)**

**WR-09**

**Summary comment: The Policy should implement additional restrictions on hauled water. END**

*Summary response: Requirement 95 (Requirement 97 in the draft Policy) states that cannabis cultivators using hauled water must retain the appropriate documentation illustrating that the water is being diverted and transported in a legal manner. The State Water Board will evaluate the need for additional requirements on hauled water in future revisions to the Policy based on information gathered during Policy implementation. END*

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

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Cannabis documents referenced: Requirement 97

**020.016**

Comment text: Requirement 97, page 34 should have a local jurisdictional comment as permission to use hauled water varies in different counties. Sonoma for emergency use only and if approved by the PRMD Director, for example END

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**Fielding, Tom**

**Grandfather coverage (GR)**

**GR-01**

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*  
*END*

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Cannabis documents referenced:

**013.001**

Comment text: I urge you to grandfather those of us already enrolled into the NCWQCB program until the first renewal comes up; then we can adjust and fix any deficiencies that our farms still have in regards to the State Water Board Guidelines. END

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**Ghidella, Jeff**

**Grandfather coverage (GR)**

**GR-01**

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*

*END*

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Cannabis documents referenced:

**006.002**

Comment text: At the very least allow compliant gardens to be grandfathered in to prevent more needless expense and destruction. END

#### Setbacks (SB)

##### SB-01

***Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END***

*Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END*

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Cannabis documents referenced:

**006.001**

Comment text: Additional setback distances will create a huge burden on the environment and the farmer to move permitted and permanent greenhouses, garden beds, irrigation lines, etc. END

#### Water rights (WR)

##### WR-06

***Summary comment: Cannabis should be treated like other agricultural crops and existing water rights should apply. END***

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: Water Code Section 13149 directs the State Water Board to “adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. The principles and guidelines adopted under this section may include, but are not limited to, instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. The principles and guidelines may include requirements that apply to groundwater extractions where the board determines those requirements are reasonably necessary for purposes of this section.” Additionally, Water Code Section 13149 states “The principles and guidelines, including the interim principles and guidelines, shall include measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation.” The State Water Board must abide by the Water Code and is therefore unable to treat cannabis cultivation like other agriculture activities that use water diversions. In particular, the Legislature has expressly mandated that the State Water Board regulate cannabis cultivation in a specific and distinct from the requirements for traditional agriculture. See also response WD-01. END*

*Cannabis documents referenced: Water Code Section 13149*

#### 006.003

Comment text: Ground water should be able to be used for cannabis cultivation as it is for any other crop. Water storage tank fields will create for more earth work, and the environmental hazards that come with it. These fields of tanks will take up more space than the gardens themselves. END

### Harmonic Engineering

#### Application for coverage (AP)

##### AP-08

**Summary comment: Including a requirement that sites where any portion of the disturbed area is located within the setback are considered high risk sites is excessive and places an extraordinary burden on cultivators already enrolled in the North Coast Regional Water Board Conditional Waiver of WDRs for cannabis cultivation activities. END**

*Summary response: The draft Policy has been revised to allow a Regional Water Board Executive Officer to approve reduced setbacks for cannabis cultivators who, prior to October 17, 2017, were enrolled in a Regional Water Board order adopting WDRs or a waiver of WDRs for cannabis cultivation activities if the Executive Officer determines that the reduced setbacks will be protective of water quality. Additionally, cannabis cultivators currently enrolled under the North Coast or Central Valley Regional Water Board orders are provided a transition period to enroll under the Cannabis General Order. The transition date has been extended by one year to July 1, 2019 to allow additional time for current enrollees to comply with the Cannabis Policy and General Order requirements. END*

*Cannabis documents referenced: Order: pg 12, F39*

#### 039.005

Comment text: The proposed Risk Determination is also appropriately based on readily understood factors related to slope and proximity to riparian areas. Enhanced reporting requirements attendant to increased Risk are also reasonable. However, designating every location with any portion of the disturbed area within the riparian setbacks as High Risk is excessive and places an extraordinary burden on cultivators already enrolled in the NCRWQCB Order. END

### CEQA, permits (CQ)

#### CQ-03

**Summary comment: Protection of endangered and threatened species: The policy as presented (General Requirement 4) describes the applicant's responsibility in regards to special status species plants and wildlife under state and federal law but lacks guidelines that present steps that would initiate consultation with NMFS, USFWS and CDFW. While it does make the cultivator responsible for “meeting all requirements under the California ESA and the federal ESA” it lacks a statement of the initiating actions and timing of consultation with the wildlife agencies that would be needed to fulfill the applicant's permit requirements...The Policy and Guidelines should be revised to clearly state how take of listed species will be prevented, and to identify triggers and process for initiation of all appropriate wildlife consultations. Just as the State cannot afford to allow impacts to Waters of the United States under this Policy, nor can it afford to allow take of listed species. The Policy and General Order should explicitly establish methods to prevent take of listed species and establish a consultation mechanism for any projects possibly impacting them. Additional procedures should be required to prevent take, including a defined consultation process with USFWS and NMFS.**

**END**



## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy pertains specifically to the State Water Board's authority and is not intended to be an all-encompassing document containing information regarding all potentially applicable regulatory requirements. Specifying how to comply with existing state and federal laws protecting endangered and other Special-Status Species is beyond the scope of the Cannabis Policy. As stated in the Policy, where cannabis cultivation would result in a "take" of a protected species, the cannabis cultivator is responsible for working with the applicable agencies to discern what type of authorization is required and obtaining that authorization. Cannabis cultivators are not unique in being subject to these laws of general applicability; other industries and individuals also bear responsibility for working with responsible state and federal fish and wildlife agencies to discern how to comply with the law and avoid a take of protected species. Such compliance often relies on site-specific factors and analyses, so including guidelines for compliance with these laws in the Policy likely would be of little utility for cannabis cultivators. Cannabis cultivators unsure of how to comply with laws protecting endangered or Special-Status Species should consult with the California Department of Fish and Wildlife.*

*The State Water Board is not aware of any actual or potential conflicts between California and federal law that would preclude a cannabis cultivator from complying with both. Any such conflicts will be resolved as they materialize on a case-by-case basis.*

*Pursuant to Water Code section 13149(b), the adoption of the Policy is exempt from CEQA. However, discretionary approvals that local public agencies such as counties may require for cannabis operations may trigger the need for project-specific CEQA compliance.*

*END*

*Cannabis documents referenced:*

#### 039.009

Comment text: Section 1 - General Requirements and Prohibitions

8. A locally prepared CEQA document seems to be the best method to address concerns about sensitive plant and wildlife species and communities and, where available, should substitute for the need to hire a qualified biologist. END

### Cost of compliance (CS)

#### CS-02

**Summary comment: Review the requirement to use qualified professionals to determine if necessary considering the cost and burden of hiring specialists. END**

*Summary response: Use of qualified professionals ensures that work is performed by qualified individuals. This is consistent with the California Business and Professions Code, which requires technical reports that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, to be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. See the definition of qualified professional in the Cannabis Policy and General Order Attachment A for a list of other professionals that may supervise technical report preparation.*

*The due date for certain technical reports has been removed from the Cannabis General Order to allow cannabis cultivators to submit the reports in accordance with their schedule for conducting cultivation and cultivation-related activities. Additionally, applicants that are currently enrolled in the North Coast Regional Water Board's Conditional Waiver of WDRs or the Central Valley Regional Water Board's General WDRs will not be required to enroll under the Cannabis General Order until July 2019. END*

*Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Att A: Sec 1, pg 9, Item 5; Att A: Sec 2, pg 20, Item 5; Att A: Sec 2, pg 21, Items 8-9; Att A: Sec 2, pg 22, Items 13-14; Att A: Sec 2, pg 23, Item 23; Att A: Sec 2, pg 24, Items 26-27, 29-31; Att A: Sec 2, pg 26, Item 41; Att A: Sec 2, pg 28, Item 48; Att A: Sec 2, pg 29, Item 56; Order: Att D, pg D-4 through D-5 & D-9 through D-10*

#### 039.013

Comment text: Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation

1. This requirement creates a hardship in many rural communities, particularly in the Klamath and North Coast Regions, where state-licensed C-12 Earthwork and Paving contractors are difficult to find. Including Licensed Timber Operators in this category would provide greater access. END

#### 039.015

Comment text: Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation 27. The requirement to have water bars and rolling dips designed by a "qualified professional" is excessive. Licensed cultivators and/or landowners must be permitted to construct water bars immediately upon identifying a need. Rolling dips should also be considered within the purview of the licensed cultivator/landowner or, at the most, an LTO. END

#### 039.019

Comment text: Section 5 – Planning and Reporting

I believe the Site Erosion and Sediment Control Plan that most cannabis cultivators in the Klamath and North Coast Regions will have to prepare should be a document capable of being prepared by the cultivators themselves. Not only are "qualified professionals" expensive, they are difficult to retain, few in number and often require several hours of compensated travel time to reach the remote destinations in the Regions. Allowing cannabis cultivators to prepare their own Site Erosion and Sediment Control Plans engages them in the process and ensures they have the necessary understanding to implement the plan without having to call a "qualified professional" each time they are confronted with changed, or unforeseen, circumstances. END

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**Definitions (DE)**

**DE-04**

**Summary comment: How is "storm event" defined? Is there a 24 hour precipitation threshold? END**

*Summary response: A storm event has the normal English usage as defined by the dictionary. Storm event has been better defined in the Cannabis Policy and General Order to provide criteria defining when certain tasks are required. Criteria for inspections after a storm event have been added to the Cannabis Policy and General Order. END*

*Cannabis documents referenced: Not applicable.*

**039.014**

Comment text: Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation  
15. What is meant by "storm event"? Is there a 24 hour precipitation threshold? END

**DE-10**

**Summary comment: The 2015 study by Bauer, et. als. (Impacts of Surface Water Diversion for Marijuana Cultivation in Four Northwestern California Watersheds, hereafter "Bauer") ... is referenced in the Staff Report's Overview of Cannabis Cultivation Impacts on page 26 (the document is mistakenly cited there as "CDFW 2015"). END**

*Summary response: The Staff Report has been modified to correctly reference the Bauer 2015 study. END*

*Cannabis documents referenced:*

**039.002**

Comment text: The 2015 study by Bauer, et. als. (Impacts of Surface Water Diversion for Marijuana Cultivation in Four Northwestern California Watersheds, hereafter "Bauer") ... is referenced in the Staff Report's Overview of Cannabis Cultivation Impacts on page 26 (the document is mistakenly cited there as "CDFW 2015"). END

**Enforcement (EN)**

**EN-03**

**Summary comment: "Section 1 - General Requirements and Prohibitions**

**13. Advance notice, preferably at least 24 hours, would be less disruptive to cultivation operations and ensure that senior staff are present and available." (39.010)**

**END**

*Summary response: It is generally preferable to contact a cannabis cultivator and schedule an inspection. This allows Water Board staff the ability to schedule several inspections during the visit. However, there is no requirement for notice. Inspections may be either announced or unannounced. Announced inspections facilitate direct communication with the cannabis cultivator to review procedures and operations. Unannounced inspections may occur as the result of complaints, normal inspection procedures, or as part of a watershed evaluation. The Cannabis General Order states the cannabis cultivator shall permit representatives of the Regional Water Board and/or the State Water Board access to inspect the facility. Notice prior to the inspection is not required. END*

*Cannabis documents referenced:*

**039.010**

Comment text: Section 1 - General Requirements and Prohibitions  
13. Advance notice, preferably at least 24 hours, would be less disruptive to cultivation operations and ensure that senior staff are present and available. END

**EN-11**

**Summary comment: Enforcement needs to be an important aspect of the Policy END**

*Summary response: The State Water Board recognizes that enforcement of both legal and illegal grows is part of any successful cannabis regulatory program. The Water Boards have a variety of enforcement tools. The Policy may be implemented directly per Water Code section 1847. The Policy Requirements will also be implemented through the Cannabis General Order, the Cannabis Small Irrigation Use Registration, General Water Quality Certification for Cannabis Cultivation Activities, and the California Department of Food and Agriculture's (CDFA) commercial cannabis licenses. The Policy includes a summary of the types of enforcement actions that may be taken by the Water Boards. The Water Boards will make every effort to coordinate any enforcement action among its various divisions, offices, and regions and not initiate duplicative enforcement on the same violations. The Water Boards will coordinate enforcement with other agencies, including CDFA and the California Department of Fish and Wildlife (CDFW) where appropriate.*

*In addition to the Water Boards' dedicated enforcement staff, legislation directed the Water Boards and CDFW to expand the scope of the Watershed Enforcement Team from its initial North Coast/Central Valley focus to address cannabis cultivation activities statewide. In addition to pursuing enforcement related to cannabis cultivation, this team also provides public outreach and education, performs site inspections, and responds to complaints. END*

*Cannabis documents referenced: CCP, pg. 20*

**039.021**

Comment text: the SWRCB cannot afford to underestimate the resources and associated costs it will need to dedicate to enforcement END

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**Flow requirements, narrative (FR)**

**FR-02**

**Summary comment: The forbearance period is too restrictive. The forbearance period doesn't take into consideration regional differences. END**

*Summary response: The State Water Board had to develop a statewide Policy that could be put in effect by January 1, 2018. The tight time frame for policy development did not allow the State Water Board to develop regional forbearance periods. Instead, the State Water Board had to develop a forbearance period that would be protective statewide. A typical outdoor cannabis cultivation site requires the most water at the same time that the majority of the state's water bodies are in their lowest flow period (summer to fall). Accordingly, the most significant impacts from water diverted for cannabis cultivation occur during the dry season. Increased diversion during this period greatly affects the quantity and quality of water available, negatively impacts designated beneficial uses, and threatens the survival of endangered salmon, steelhead, and other aquatic life. In an effort to minimize the impacts that may occur from current and anticipated increased levels of cannabis cultivation, the Policy includes a forbearance period, during which water diversions for cannabis cultivation are prohibited.*

*To ensure protection of salmonid species from the adverse effects of diversions during low flow periods, diversions are not permitted during the late spring, summer, or fall months, when streamflow is especially important to anadromous salmonid populations. The wet season diversion period (diversion period) is therefore restricted to the period of higher flows, from as early as November 1 to March 31, when water is most available and impacts on fishery resources will be minimized. As the State Water Board begins to develop regional policies or makes updates to the interim Policy, forbearance periods may be adjusted as necessary to protect water quality and designated beneficial uses.*

*The Policy has been amended to address the possibility of disruption for existing cannabis cultivators. Cannabis cultivators enrolled under the cannabis orders adopted by the North Coast Regional Water Board and Central Valley Regional Water Board are not required to enroll in the statewide cannabis General Order until July 1, 2019. This grace period allows existing enrollees time to install the necessary storage to comply with the Policy's forbearance period.*

*END*

*Cannabis documents referenced:*

**039.003**

*Comment text: I think the SWRCB's interpretation of SB 837, particularly the language in Water Code Sec. 13149(a)(1)(A)4 as indicating that the Legislature intended the SWRCB to prohibit all diversions of surface water, throughout the entire state, for 7 ½ months out of the year and to extinguish the use of riparian water rights for commercial cannabis cultivation is overbroad and misplaced. END*

**FR-11**

**Summary comment: we've been able to have coordination about our diversion rates, and were this Order to be adopted as written, the forbearance period particularly would be devastating for us. END**

*Summary response: The State Water Board had to develop a statewide Policy that could be put in effect by January 1, 2018. The tight time frame for policy development did not allow the State Water Board to develop regional forbearance periods. Instead, the State Water Board had to develop a forbearance period that would be protective statewide. A typical outdoor cannabis cultivation site requires the most water at the same time that the majority of the state's water bodies are in their lowest flow period (summer to fall). Accordingly, the most significant impacts from water diverted for cannabis cultivation occur during the dry season. Increased diversion during this period greatly affects the quantity and quality of water available, negatively impacts designated beneficial uses, and threatens the survival of endangered salmon, steelhead, and other aquatic life. In an effort to minimize the impacts that may occur from current and anticipated increased levels of cannabis cultivation, the Policy includes a forbearance period, during which water diversions for cannabis cultivation are prohibited.*

*The Policy allows cannabis cultivators to enter into agreements with the California Department of Fish and Wildlife and one or more cannabis cultivators to provide watershed-wide protection for fisheries that is comparable to or greater than the instream flow Requirements provided in the Policy. In such instances, the cultivators may request approval from the State Water Board to implement the agreement in place of the instream flow Requirements (numeric, narrative, and forbearance) in the Policy.*

*To ensure protection of salmonid species from the adverse effects of diversions during low flow periods, diversions are not permitted during the late spring, summer, or fall months, when streamflow is especially important to anadromous salmonid populations. The wet season diversion period (diversion period) is therefore restricted to the period of higher flows, from as early as November 1 to March 31, when water is most available and impacts on fishery resources will be minimized. As the State Water Board begins to develop regional policies or makes updates to the interim Policy, forbearance periods may be adjusted as necessary to protect water quality and designated beneficial uses.*

*END*

*Cannabis documents referenced:*

**031.001**

*Comment text: we've been able to have coordination about our diversion rates, and were this Order to be adopted as written, the forbearance period particularly would be devastating for us. END*

**Flow requirements, numeric (FN)**

**WS-02**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: If a cultivator does not have internet access, there should be an alternative option for checking their assigned watershed gage, either via phone or other method determined by the SWB. END**

Summary response: As stated in the Policy, compliance gages will be assigned using existing gages. The flow requirements will be applied at these gages which are reported on one of two sites: (1) the United States Geological Survey – National Water Information System (NWIS); or (2) California Department of Water Resources (DWR) – California Data Exchange Center (CDEC). These websites are accessible by anyone, including public radio and community resource centers. Cannabis cultivators in ungaged watersheds may be required to install a gage if information indicates that use of the assigned gage does not adequately protect instream flows. The State Water Board will monitor where cannabis cultivation diversions are located to track areas where locally concentrated cannabis cultivation water diversions within a watershed may adversely affect instream flows.

Additionally, the State Water Board is developing an online mapping tool to assist cannabis cultivators with determining which compliance gage applies to them and whether they may divert water. It is anticipated that the online mapping tool will allow cannabis cultivators to enter their address or otherwise locate their point of diversion to identify their assigned watershed compliance gage. The compliance gage assignments may change as more information becomes available. To ensure cannabis cultivators are reporting in accordance with the appropriate gage, the cannabis cultivator is required to check the website for their compliance gage assignment at least daily and prior to diverting water to ensure water is available to divert at that gage (i.e., the real-time daily average flow is greater than the Numeric Flow Requirement at the assigned compliance gage).

Ultimately it is the responsibility of the cannabis cultivator to ensure compliance with the requirements of the Policy. This may require some cannabis cultivators to work with local cooperatives, community centers, or other industry groups to develop ways to properly obtain flow information during the diversion season. Such methods could include, but are not limited to, phone lines with diversion information or posted signs on common roads. This requirement is consistent with other water right requirements. As normalized, legal businesses, cannabis cultivators are encouraged to develop information infrastructure, such as internet access or local cooperatives, that is typical of other businesses.

END

Cannabis documents referenced:

**039.018**

Comment text: Section 3 – Numeric and Narrative Instream Flow Requirements & Section 4 – Watershed Compliance Gage Assignments

Many cultivation locations in the Klamath and North Coast Regions lack internet or cellular service, making flow gage monitoring locally impracticable. END

### Grandfather coverage (GR)

#### GR-01

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.

The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).

California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.

END

Cannabis documents referenced:

**031.003**

Comment text: So what I'm saying is just, I'd like to see the regional boards retain enough flexibility to make site-specific, if it's independent WDRs or whether they can, at least in the North Coast, operate under the existing Order END

**039.020**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: I would urge the SWRCB to allow our enrollments to continue under the terms and conditions of that Order for its original five-year duration. This would both allow cultivators to continue to implement their Water Resource Protection Plans that many of us have been operating under for over a year and still meet the direction in Water Code Sec. 13149(b)(1) as it, by definition, "does not involve relaxation of existing streamflow standards." END

#### Road building, land disturbance, slope stability (RB)

##### RB-01

**Summary comment:** "After July 1, 2017, and prior to initiating any land disturbance, Tier 2 cannabis cultivators located on slopes greater than 30% and less than 50% must submit a Site Erosion and Sediment Control Plan to the Regional Water Board Executive Officer for any cannabis-related land development or alteration. The Site Erosion and Sediment Control Plan shall be approved by the applicable Regional Water Board Executive Director prior to the cannabis cultivator initiating any land disturbance."

**What about existing areas on slopes greater than 30%?" END**

Summary response: The Cannabis Policy and General Order have been revised to remove the July 1, 2017 date. The date was removed because even though a cannabis cultivation facility may preexist the adoption of the policy and general order, cultivation activities necessitate annual soil disturbance. Because there is no assurance that previous erosion control methods were or are effective, it is logical to require all cannabis cultivators with disturbed areas on slopes greater than 30 percent to prepare the technical report. Those cultivators that are enrolled under the North Coast Regional or Central Valley Regional Water Board are not required to comply with the requirement until they transition to the Cannabis Policy and General Order (no later than 1 July 2019). END

Cannabis documents referenced: Att A: Overview, pg 4, Item 11; Sec 1, pg 14 – 15, Item 30; Sec 1, pg 15, Item 32; Sec 2, pg 19, Item 2.

Policy: Att B, pg 6, par 2.

Staff Rpt: App 3, pg 6, par 2.

##### 039.012

Comment text: Section 1 - General Requirements and Prohibitions  
30. Is the date "July 1, 2017" correct? END

#### Setbacks (SB)

##### SB-01

**Summary comment:** I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END

Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END

Cannabis documents referenced:

##### 039.006

Comment text: I would reverse the Risk Designation Summary in Table 1 of the draft Policy and recommend that the SWRCB adopt the distances in the NCRWQCB's Order 8 as the standard Riparian Setbacks for Moderate Risk Determination. The draft Policy's "Moderate Risk" Minimum Riparian Setbacks should be incorporated into the threshold for Low Risk Determination. END

##### 039.008

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: If the Minimum Riparian Setbacks in the draft Policy are retained then the Variance process must be sufficiently flexible as to be meaningful. Returning to my example of the stable, organic garden 180 feet from the Class I stream. If the procedure to get a variance proves impractical or impossible within the time constraints, then I will be forced to move that garden and may be placed into High Risk designation until I do so. Meaning that I will have to hire a "qualified professional" and undoubtedly have to bring in equipment to tear up a perfectly stable garden and surrounding native vegetation so that I can move it 20 feet farther back from the stream to accommodate a linear measurement that has more to do with uniform standards than actual threat to water quality.

The language from the NCRWQCB Order regarding "site-specific riparian buffers" (referenced in fn. 8) should be incorporated as the standard for Variances to the Minimum Riparian Setbacks. END

#### Tribal, cultural (TC)

##### TC-03

**Summary comment: Section 1 - General Requirements and Prohibitions**

**17 – 20. Protection of cultural resources seems to be beyond the scope of the SWRCB's responsibilities. B & P Code Sec. 19332(c) designates CDFG as the lead agency for CEQA purposes. Protection of cultural resources is better suited to the lead agency and its CEQA documents as well as any locally prepared CEQA document.**

**END**

*Summary response: Business and Professions Code section 26060 has replaced and superseded former section 19332. (See Stats. 2017, ch. 27, §§ 2, 47). Under the Statute, the State Water Board is the agency responsible for establishing conditions to ensure that individual and cumulative effects of water diversion and discharge associated with cannabis cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability; ensure that cultivation does not negatively impact springs, riparian habitat, wetlands, or aquatic habitat; and otherwise protect fish, wildlife, fish and wildlife habitat, and water quality. (See Bus. & Prof. Code, § 26060, subd. (f); id., § 26060.1, subd. (b); see also generally Wat. Code, § 13149.) In this capacity, the Board has broad authority to mitigate and avoid significant effects on the environment caused by the Cannabis Policy, General Order, small Irrigation Use Registration program, and activities they authorize, including significant effects on tribal cultural resources. (Pub. Res. Code, § 21004; id., §§ 21084.2, 21084.3; Cal. Code. Regs., tit. 14, §§ 15040–15041.) In addition, the Board has broad authority to prevent unlawful diversion, (Wat. Code, § 1052) and to prevent the waste and unreasonable use of water, (Cal. Const., Art. X, § 2; Wat. Code, § 275).*

*Water Code section 13149 grants the State Water Board broad authority to protect the environment from the negative impacts of cannabis cultivation. The statute provides authority to adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. (Wat. Code, § 13149, subd. (a)(1)(A).) This authority comes with a mandate to adopt measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation. (Id., subd. (a)(2).) The statute provides examples of measures that may be adopted, including instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. (Id., subd. (a)(1)(A).) However, the statute is clear that the State Water Board's authority is "not limited to" these examples, (ibid.), affirming that the State Water Board's authority is not limited to flow- or diversion-related measures.*

*California law is clear that an activity that causes a substantial adverse change to the significance of a tribal cultural resource is an activity that has a significant effect on the environment. (Pub. Res. Code, § 21084.2.) California law mandates that public agencies avoid damaging effects to tribal cultural resources. (Id., § 21084.3, subd. (a).) Cannabis cultivation activities and associated diversions in areas where cannabis cultivation may have the potential to substantially affect instream flows, typically undeveloped or lightly-developed rural areas, have the potential to significantly affect the environment by causing a substantial adverse change in the significance of tribal cultural resources, including sacred places, previously undisturbed archeological sites, and previously undisturbed human remains. These impacts are caused by diversion, construction of diversion works, and activities, like cultivation, that would not occur but for the ability to divert.*

*For the foregoing reasons, the cultural resources protection terms are reasonably necessary for the purposes of section 13149 of the Water Code.*

*END*

*Cannabis documents referenced:*

##### 039.011

Comment text: Section 1 - General Requirements and Prohibitions

17 – 20. Protection of cultural resources seems to be beyond the scope of the SWRCB's responsibilities. B & P Code Sec. 19332(c) designates CDFG as the lead agency for CEQA purposes.

Protection of cultural resources is better suited to the lead agency and its CEQA documents as well as any locally prepared CEQA document. END

#### Water diversion, storage (WS)

##### FR-01

**Summary comment: The Policy should implement a grace period to allow for the installation of storage facilities END**

*Summary response: The Policy has been updated to provide a waiver of the 2018 surface water dry season forbearance period (April 1, 2018 through October 31, 2018), with certain conditions, so that cannabis cultivators may divert during this period in a manner consistent with their water right or claim of right. Cultivators that make use of this waiver are required to: file for a Cannabis Small Irrigation Use Registration (SIUR) or submit an application for an appropriate water right permit to prepare for potential curtailment during the dry season of 2018 (triggered by Aquatic Base Flow Numeric Instream Flow Requirement); and install storage as soon as possible after storage has been authorized following the conclusion of the winter period. All water must be diverted under a valid basis of right and all cannabis cultivators will be subject to the aquatic base flow requirements put forth in the Policy. Further, all storage shall be installed in accordance with the Policy and General Order, which include requirements to protect water quality and beneficial uses, including plan development and approval prior to land disturbance, implementation of best practicable treatment controls, and no work during the winter period. END*

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

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Cannabis documents referenced:

**039.007**

Comment text: If the draft Policy and General Order are adopted on October 19, there will be no time for diverters, particularly those exercising riparian water rights, to develop sufficient storage facilities even if it were feasible. This is the one area of the draft Policy where I actually found internal inconsistency. END

**WR-01**

**Summary comment: The Policy should include look at conditions more locally and include a process to support implementation and monitoring of the regulatory program and future revisions. END**

*Summary response: This interim Policy was developed under a short timeline to meet legislative mandates and ensure requirements were in place to protect water quality and beneficial uses in advance of the January 1, 2018 deadline for the California Department of Food and Agriculture's CalCannabis Licensing Program. The Cannabis Policy will be updated based on information and experience developed in the coming year(s).*

*The State Water Board plans to continue to consult with the California Department of Fish and Wildlife on any updates to the Policy and may develop an adaptive management framework for the Policy based on such consultation and coordination. END*

Cannabis documents referenced:

**031.004**

Comment text: I am asking for maybe some closer peaks at different watershed compliance ability so that we are actually getting a real world picture of what the impacts may or may not be. And where they are there? Obviously, you've to limit what's being done, but where they're less, a little more flexibility would be helpful. END

**WS-03**

**Summary comment: The Policy should not prohibit onstream reservoirs on class III streams. END**

*Summary response: The Policy does not prohibit onstream storage reservoirs. However, onstream storage reservoirs that do not have a valid existing water right for irrigation, issued prior to October 17, 2017 will not be able to qualify for the Small Irrigation Use Registration Program.*

*Any cannabis cultivator who wants to use an onstream storage reservoir for cannabis cultivation who does not have an existing water right will have to go through the appropriate water right process. The Policy is unable to evaluate or mitigate, the potential environmental impacts of unpermitted onstream reservoirs. Such impacts will be identified and mitigated in the appropriate water right process. Additionally, new onstream reservoir construction includes potential impacts that would require analysis through the California Environmental Quality Act process, which is not covered under the Policy.*

*In addition, the Policy requires that all onstream reservoirs used for cannabis cultivation shall be operated in a manner that is consistent with the requirements of the Policy including, but not limited to, all bypass flow requirements and forbearance periods. END*

Cannabis documents referenced:

**031.002**

Comment text: We're in a mountainous terrain. So there's no place to put storage that's off-stream. All of our storage would be considered instream storage, because even a draw in this area would be considered a Class 3. END

**Water rights (WR)**

**WR-10**

**Summary comment: Daily monitoring is excessive and expensive. The policy should just require monthly records END**

*Summary response: Cannabis cultivators are required to maintain records of daily diversion and use of water related to cannabis cultivation activities. Daily records ensure compliance with the daily flow requirements. There may be certain times in a month where diversions are not allowed. Monthly records would not be able to show whether or not a diverter was in compliance with such a requirement. Additionally, requiring daily diversion records forces cannabis cultivators to monitor their diversion works and compliance gages more regularly to make sure bypass flows are being met. Daily diversion records are required to be kept at the cultivation or diversion site and made available upon request. In addition to daily records, similar to requirements for other water users, water use reports shall be filed on an annual basis and shall document diversions by month made during the previous calendar year. END*

Cannabis documents referenced:

**039.016**

Comment text: Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation  
84.The requirement for daily diversion records is unreasonably excessive when balanced against the quality of the data it could reveal. Cannabis cultivators should be required to maintain monthly records like other small diverters. Protections related to fish screening and maximum instantaneous diversion rate should render the monthly recording requirement sufficient. END

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

*Updated: 10/13/2017*

**039.017**

Comment text: Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation  
101.This requirement is unreasonably expensive and excessive. Monthly records of water used for irrigation should be sufficient for any instream flow or other environmental considerations. END

**WR-14**

**Summary comment: At the very least, the Policy should allow some kind of water trading scheme where I could pay the vineyard downstream \$5,000 to forego the use of 1 acre-foot of water that I could use.**

**END**

*Summary response: Water transfers are not directly addresses in the Cannabis Policy. However, exchange of waters covered under the water rights system is available through the Division of Water Rights water transfer process. The exchange of water for cannabis cultivation would be handled the same as any other water right. END*

*Cannabis documents referenced:*

**039.001**

Comment text: At the very least, the Policy should allow some kind of water trading scheme where I could pay the vineyard downstream \$5,000 to forego the use of 1 acre-foot of water that I could use.  
END

**WR-16**

**Summary comment: I believe SB 837 contemplated that the most appropriate means to protect instream flows in watersheds where they may be endangered by excessive diversions due to commercial cannabis cultivation is by placing limitations on the number of unique identifiers authorized in the area as provided in H & S Code Sec.**

**11362.777(e)(1)**

**END**

*Summary response: AB 133 amended SEC. 6. Section 26069 (c)(1) of the Business and Professions Code to read: The department, in consultation with, but not limited to, the bureau, shall implement a unique identification program for cannabis. In implementing the program, the department shall consider issues including, but not limited to, water use and environmental impacts. If the State Water Resources Control Board or the Department of Fish and Wildlife finds, based on substantial evidence, that cannabis cultivation is causing significant adverse impacts on the environment in a watershed or other geographic area, the department shall not issue new licenses or increase the total number of plant identifiers within that watershed or area.*

*The Policy will be updated to reflect this information. END*

*Cannabis documents referenced:*

**039.004**

Comment text: I believe SB 837 contemplated that the most appropriate means to protect instream flows in watersheds where they may be endangered by excessive diversions due to commercial cannabis cultivation is by placing limitations on the number of unique identifiers authorized in the area as provided in H & S Code Sec.  
11362.777(e)(1)  
END

**Hoekstra, Bud**

**Constituents of concern (CC)**

**CC-04**

**Summary comment: I suggest you review the EPA textbook, National Management Measures to Control Nonpoint Source Pollution from Agriculture. END**



## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The State Water Board adopted a nonpoint source policy in 2004 entitled Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Policy). The purpose of the policy is to improve the state's ability to effectively manage nonpoint source pollution, conform to the requirements of the Clean Water Act, and comply with the Federal Coastal Zone Act Reauthorization Amendment of 1990.*

*The USEPA report referenced states that agricultural nonpoint source pollution is the leading source of water quality impacts on surveyed rivers and streams, the third largest source for lakes, the second largest source of impairments to wetlands, and a major contributor to contamination of surveyed estuaries and ground water. Impacts can be generated from activities such as poorly located or managed animal feeding operations and manure, overgrazing, plowing too often or at the wrong time and improper application fertilizer. The Cannabis Policy and General Order limit the application of nitrogen, establish riparian setbacks, prohibit off-site discharge of irrigation water, and require specific technical reports and evaluation of sites more likely to generate storm water containing sediment or other pollutants. Tier 1 and Tier 2 cultivators must also comply with a monitoring and reporting program to document the effectiveness of the preventive actions. The requirements of the Cannabis Policy and General Order address the issues raised in the referenced publication.*

END

Cannabis documents referenced: Order: pg 11, F.38

**069.002**

Comment text: I suggest you review the EPA textbook MANAGEMENT MEASURES FOR THE CONTROL ON NONPOINT POLLUTION FROM AGRICULTURE which is on the web.

END

#### CC-05

**Summary comment: The NRCS has a storage practice titled Agrichemical Handling Facility, which could be mentioned in the policy under pesticide storage. END**

*Summary response: The publication referenced provides guidance for large chemical storage needs on large farms. The guidance addresses many issues that are not relevant for cannabis cultivation due to the difference in size. (Hundreds or thousands of acres verses cultivation areas of less than one acre.) It is unlikely that cannabis cultivation will ever approach the size or chemical need that would be provided in a structure described in the NRCS publication.*

*Attachment A contains requirements addressing fertilizers, pesticides, and petroleum products that minimize the potential for spills, specify storage requirements, and require absorbent material to be available onsite in case of a spill. END*

Cannabis documents referenced: Att A: Sec 2, pg 36, Items 106 – 109.

**069.003**

Comment text: The NRCS has a storage practice titled AGRICHEMICAL HANDLING FACILITY, or AHJ, which could be mentioned in the policy under pesticide storage. END

#### CC-06

**Summary comment: Organic standards should be developed; Cannabis pesticides need to be registered. Agricultural commissioners need to be involved in the control of chemicals used to grow marijuana. END**

*Summary response: Organic standards are required to be developed by the California Department of Food and Agriculture under California Business and Professions Code Section 26062, and will not be regulated through the Cannabis Policy. The California Department of Pesticide Regulation regulates pesticide registration for cannabis. The Cannabis Policy does not dictate how state or county agricultural commissioners control chemicals for cannabis cultivation. END*

Cannabis documents referenced:

**071.001**

Comment text: 3. Organic standards should be developed; Cannabis pesticides need to be registered. Agricultural commissioners need to be involved in the control of chemicals used to grow marijuana. END

#### Enforcement (EN)

##### EN-08

**Summary comment: The State needs a clearinghouse where potential water-quality issues associated with registered and illicit grows are reported and recorded, and probably an enforcement mechanism to discern illicit pesticide use to protect the water & soil resources.(71.002) END**

*Summary response: Each Regional Water Board has contact information on their webpage. Complaints and information can be submitted there. Because each Regional Water Board is familiar with the water bodies and other environmental conditions within their region, that is the best alternative for providing complaints or information. END*

Cannabis documents referenced:

**071.002**

Comment text: 1. The State needs a clearinghouse where potential water-quality issues associated with registered and illicit grows are reported and recorded, and probably an enforcement mechanism to discern illicit pesticide use to protect the water & soil resources. END

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

#### Regulatory structure (RS)

##### RS-11

**Summary comment:** "If the CWA permit cannot be obtained, the cannabis cultivator shall contact the appropriate Regional Water Board or State Water Board prior to commencing any cultivation activities. The Regional Water Board or State Water Board will determine if the cannabis cultivation activity and discharge is covered by the Requirements in the Policy..." This is in contradiction to federal laws. Statement in Policy shall be clear specific to 401 and 404 permits. Disambiguate requirements/authorities of the federal Clean Water Act from those of the state Cannabis Policy from those of the Regional Boards so that both growers and regulators can better understand which rules apply. In fact, the policy asserts, "The Cannabis Cultivator shall comply with all federal ...regulations." **Federal law makes Cannabis cultivation illegal - why include impossible statements? (21.022, 50.004, 50.009, and 69.001) END**

Summary response: Compliance with applicable laws, regulations, and permitting requirements is an appropriate and common term in regulatory programs and policies. Because cannabis remains illegal under federal law a cultivator may not be able to obtain a Section 404 permit from the Army Corps. In cases where the cultivator can obtain the Section 404 permit, they are required to and must also obtain a Section 401 water quality certification. If the general water quality certification is used, the applicant must submit an application at least 60 days prior to starting work, and obtain written authorization from the Executive Officer. In cases where the cultivator cannot obtain the Section 404 permit, they cannot obtain a Section 401 water quality certification. Those cultivators are required to obtain coverage from the Regional Water Board. The Regional Water Board may elect to prepare site-specific waste discharge requirements (WDRs), if appropriate. **END**

Cannabis documents referenced:

##### 069.001

Comment text: In Fact, the policy asserts "The Cannabis Cultivator shall comply with all federal ...regulations." Federal law makes cannabis cultivation illegal - why include impossible statements?  
**END**

##### RS-22

**Summary comment:** **The Water Board needs to define BMPs, elaborate on suites of BMPs, and discuss the science of BMPs- and train its staff to comprehend what a BMP is. (71.003). END**

Summary response: The Cannabis Policy and General Order provide an extensive list of best practicable treatment and control (BPTC) measures (similar to best management practices [BMPs]) in Attachment A. The BPTC measures address activities related to cannabis cultivation such as earthwork, erosion control, road building, road drainage, stream crossings, soil amendment handling/disposal, riparian setbacks, water storage/use, fertilizers, pesticides, petroleum, cultivation waste, refuse, domestic waste, winterization procedures, flow gaging, and water diversion. BPTCs were selected because that terminology is consistent with the State Water Board's Antidegradation Policy.

The justification and science behind BPTC measures is provided in the Cannabis Policy, General Order, and the Staff Report. Typically, the issue of concern is discussed with the reasons why a BPTC measure was included and a description of how the BPTC measure is protective of water quality. Development and implementation of BPTCs is a common task for the State and Regional Water Boards, the staff has extensive experience applying the requirements of a policy and/or order, as well as initiating enforcement activities if non-compliance is noted. In addition, the State and Regional Water Boards participate in regular roundtable meetings to ensure BPTCs are applied consistently, compare experiences in other regions, and also as a venue to determine if staff training is required.

The North Coast and Central Valley Regional Water Boards have both performed extensive outreach to the cannabis cultivation community to explain the requirements of their orders to people who are not familiar with the regulatory environment. It is anticipated that the outreach will continue as the Cannabis Policy and General Order are implemented. In addition, staff are always available to explain the requirements to interested parties. As public agencies, the State and Regional Water Boards have developed programs to disseminate information to the regulated communities. A change was not made in response to this comment. **END**

Cannabis documents referenced: Att A: Sec 5, pg 69, par 2.

Order: pg 3, F.9; pg 10, F.35 and F.36; pg 11, F.38; pg 14, F.42; pg 17, C.1; pg 19, C.2; pg 21, C.3

##### 071.003

Comment text: 7.The Water Board needs to define BMPs, elaborate on suites of BMPs, and discuss the science of BMPs- and train its staff to comprehend what a BMP is. **END**

#### Site-specific WDRs, ILRP (WD)

##### WD-01

**Summary comment:** **Commenters questioned why the cannabis program isn't aligned with the Irrigated Lands Regulatory Program (ILRP) asserting it is consistent with traditional agricultural practices and is irrigation intensive. END**

Summary response: The California Legislature (Water Code section 13149) directed the State Water Board to develop principles and guidelines specifically to address cannabis cultivation activities. In addition, the Legislature (Water Code section 13276(b)) directed the Regional Water Boards, and authorized the State Water Board, to address a minimum of 12 types of waste discharges associated with cannabis cultivation. Because the combination of waste types is unique to cannabis cultivation, addressing the issues in a cannabis-specific regulatory program is more sensible than expanding the requirements of the ILRP to include cannabis cultivation. **END**

Cannabis documents referenced:

##### 071.004

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

Comment text: Cannabis is irrigation-intensive, and it should be a part of the ILRP. END

**Howard, Katherine**

**Cost of compliance (CS)**

**CS-11**

**Summary comment: There is concern regarding the requirement to use weed-free straw mulch due to pesticide and herbicide residuals that could affect organic certification. END**

*Summary response: In accordance with California Water Code section 13149, the State Water Board consulted with CDFW in preparing the Cannabis Policy and Cannabis General Order. The State Water Board also consulted with the CDFA. CDFW defines an invasive species as organisms (plants, animals, or microbes) that are not native to an environment, and once introduced, they establish, quickly reproduce and spread, and cause harm to the environment, economy, or human health. CDFW expressed concerns regarding invasive weeds that could be introduced at cultivation sites. Section 403 of the California Food and Agricultural code states the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds. The requirement to use weed free straw mulch is appropriate. Internet searches on the topic did not reveal any publications indicating pesticide or herbicide residuals could affect organic certification. END*

*Cannabis documents referenced: Att A: Sec 2, pg 21, Items 9-10; Att A: Sec 2, pg 25, Item 33; Att A: Sec 2, pg 34, Item 99; Policy: Att B, pg 11, par 6; Staff rpt: App 3, pg 11, par 6*

**040.001**

Comment text: I'm very concerned about the requirement for cannabis farms to use certified weed free straw due to pesticide and herbicide residuals that could affect organic certification. END

**Grandfather coverage (GR)**

**GR-01**

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.  
END*

*Cannabis documents referenced:*

**040.002**

Comment text: Due to the amount of capitol invested to become compliant with the North Coast Regional Water Board Order, I would like to see farms enrolled in that order be grandfathered in until 2021. END

**Huddleston, Mary**

**Grandfather coverage (GR)**

**GR-01**

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*  
*END*

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Cannabis documents referenced:

**008.001**

Comment text: Please grandfather (the applicants of ) the District 1 water board requirements for five more years. END

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### Water diversion, storage (WS)

**FR-01**

**Summary comment: The Policy should implement a grace period to allow for the installation of storage facilities END**

*Summary response: The Policy has been updated to provide a waiver of the 2018 surface water dry season forbearance period (April 1, 2018 through October 31, 2018), with certain conditions, so that cannabis cultivators may divert during this period in a manner consistent with their water right or claim of right. Cultivators that make use of this waiver are required to: file for a Cannabis Small Irrigation Use Registration (SIUR) or submit an application for an appropriative water right permit to prepare for potential curtailment during the dry season of 2018 (triggered by Aquatic Base Flow Numeric Instream Flow Requirement); and install storage as soon as possible after storage has been authorized following the conclusion of the winter period. All water must be diverted under a valid basis of right and all cannabis cultivators will be subject to the aquatic base flow requirements put forth in the Policy. Further, all storage shall be installed in accordance with the Policy and General Order, which include requirements to protect water quality and beneficial uses, including plan development and approval prior to land disturbance, implementation of best practicable treatment controls, and no work during the winter period. END*

Cannabis documents referenced:

**008.002**

Comment text: The new regulations that the state is requiring for cannabis farmers has more potential to cause negative environmental impacts by requiring the storing and building ponds for the forbearance period of April through October. This grace period of five years will allow currently coming to compliant and permitted farms to safely bring their water storage into compliance with the least amount of environmental impact as possible. END

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### Humboldt County

#### Cost of compliance (CS)

**CS-12**

**Summary comment: The number of technical reports that must be submitted represents a cost challenge to existing cannabis cultivators already enrolled in the North Coast Regional Water Board Conditional Waiver of WDRs. END**

*Summary response: The number of reports required is a function of the site specific conditions. Sites located a suitable distance from a water body on relatively level terrain are only required to submit the Site Management Plan. Sites located in close proximity to a water body or on a sloped property, are a higher threat to water quality and therefore are subject to additional technical reporting (and implementation) requirements. Similarly, larger cultivation sites are an inherently higher threat to water quality and have additional technical report requirements imposed upon them. For those facilities that cannot comply with the applicable BPTC measures, a schedule to achieve compliance can be obtained from the Regional Water Board. For those cultivators that have already submitted a report to the North Coast or Central Valley Regional Water Board, the Site Management Plan should be a relatively minor update to the report previously submitted.*

*The Cannabis Policy and the Cannabis General Order were updated to remove the requirements from certain technical reports to be submitted within 90 days of application submittal. The due dates of certain technical reports are now based on the cannabis cultivator's cultivation schedule. END*

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

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Cannabis documents referenced: Att A: Sec 1, pg 15, Item 32; Att A: Sec 5, pg 69, par 1; Att A: Sec 5, pg 69; par 2; Att A: Sec 5, pg 70, par 2; Att A: Sec 5, pg 70, par 7; Order: pg 17, C.1.b; Order: pg 18, C.1.c; Order: pg 18, C.1.d

#### 045.003

Comment text: The draft statewide order now requires preparation of one or more of the following new technical reports, including: Site Management Plan, Site Erosion and Sediment Control Plan, Disturbed Area Stabilization Plan, Nitrogen Management Plan, and Site Closure Report(s). Even if there were no change in the amount of information collected under these new specific technical reports, this will represent a new cost/challenge to existing operators, many of whom remain somewhat mystified by the regulatory requirements thus far developed. It will also represent a renewed burden and complication to local communities of private consultants that have been over-extended for some time now, under the current effort to assist operators in evaluating and addressing site-specific compliance challenges. END

### Flow requirements, narrative (FR)

#### FR-01

**Summary comment: The Policy should implement a grace period to allow for the installation of storage facilities END**

*Summary response: The Policy has been updated to provide a waiver of the 2018 surface water dry season forbearance period (April 1, 2018 through October 31, 2018), with certain conditions, so that cannabis cultivators may divert during this period in a manner consistent with their water right or claim of right. Cultivators that make use of this waiver are required to: file for a Cannabis Small Irrigation Use Registration (SIUR) or submit an application for an appropriate water right permit to prepare for potential curtailment during the dry season of 2018 (triggered by Aquatic Base Flow Numeric Instream Flow Requirement); and install storage as soon as possible after storage has been authorized following the conclusion of the winter period. All water must be diverted under a valid basis of right and all cannabis cultivators will be subject to the aquatic base flow requirements put forth in the Policy. Further, all storage shall be installed in accordance with the Policy and General Order, which include requirements to protect water quality and beneficial uses, including plan development and approval prior to land disturbance, implementation of best practicable treatment controls, and no work during the winter period. END*

Cannabis documents referenced:

#### 045.004

Comment text: The Cannabis Cultivation Waste Discharge Regulatory Program (CCWDRP) (i.e. – Order# R1-2015-0023 - Waiver of Waste Discharge Requirements and General Water Quality Certification) makes clear that Tier 2 enrollees may be granted up to 5 years to achieve compliance with the standard conditions of the order depending on the complexity and degree of challenges faced. The Draft State Order does not provide the same measure of assurances and is unclear (or possibly of intolerant) on matters involving non-compliance with the new forbearance periods and restrictions being established under the forthcoming Principles and Guidelines Policy and Small Irrigation Use Registration (SIUR) requirements being applied to Cannabis Cultivators. END

#### FR-02

**Summary comment: The forbearance period is too restrictive. The forbearance period doesn't take into consideration regional differences. END**

*Summary response: The State Water Board had to develop a statewide Policy that could be put in effect by January 1, 2018. The tight time frame for policy development did not allow the State Water Board to develop regional forbearance periods. Instead, the State Water Board had to develop a forbearance period that would be protective statewide. A typical outdoor cannabis cultivation site requires the most water at the same time that the majority of the state's water bodies are in their lowest flow period (summer to fall). Accordingly, the most significant impacts from water diverted for cannabis cultivation occur during the dry season. Increased diversion during this period greatly affects the quantity and quality of water available, negatively impacts designated beneficial uses, and threatens the survival of endangered salmon, steelhead, and other aquatic life. In an effort to minimize the impacts that may occur from current and anticipated increased levels of cannabis cultivation, the Policy includes a forbearance period, during which water diversions for cannabis cultivation are prohibited.*

*To ensure protection of salmonid species from the adverse effects of diversions during low flow periods, diversions are not permitted during the late spring, summer, or fall months, when streamflow is especially important to anadromous salmonid populations. The wet season diversion period (diversion period) is therefore restricted to the period of higher flows, from as early as November 1 to March 31, when water is most available and impacts on fishery resources will be minimized. As the State Water Board begins to develop regional policies or makes updates to the interim Policy, forbearance periods may be adjusted as necessary to protect water quality and designated beneficial uses.*

*The Policy has been amended to address the possibility of disruption for existing cannabis cultivators. Cannabis cultivators enrolled under the cannabis orders adopted by the North Coast Regional Water Board and Central Valley Regional Water Board are not required to enroll in the statewide cannabis General Order until July 1, 2019. This grace period allows existing enrollees time to install the necessary storage to comply with the Policy's forbearance period.*

END

Cannabis documents referenced:

#### 045.002

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: At minimum, a 45-day increase in the forbearance period will be necessary –now 7 months vs. typical 5½ month period established by County’s Commercial Medical Marijuana Land Use Ordinance (CMMLUO) and Cannabis Cultivation Waste Discharge Regulatory Program (CCWDRP) (i.e. – Order# R1-2015-0023 - Waiver of Waste Discharge Requirements and General Water Quality Certification).  
Extending the minimum length of the forbearance period and applying the principles of forbearance to additional types of water sources will be disruptive as it represents a sudden unexpected change that will prove both technically and financially difficult to accommodate by many existing operators within the timeframes provided for demonstrating compliance –especially given the limited season for earthwork and similar construction activities associated with developing vessels for large volumes of water storage;  
END

#### Grandfather coverage (GR)

##### GR-01

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*  
END

*Cannabis documents referenced:*

##### 045.005

Comment text: In light of the preceding points, it is imperative that provisions of the Cannabis Cultivation Waste Discharge Regulatory Program (CCWDRP) (i.e. – Order# R1-2015-0023 - Waiver of Waste Discharge Requirements and General Water Quality Certification) remain in effect through 2020, to enable the greatest percentage of existing operators a chance to participate and achieve compliance with short and long term water quality objectives. This will allow for further development of site-specific compliance strategies brokered during local permit review, as well as preserve greater opportunities for relocation pursuant to local incentives (Retirement, Remediation, and Relocation provisions of the CMMLUO), resulting in proper closure and remediation and reduced abandonment of former sites. END

#### Setbacks (SB)

##### SB-01

**Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END*

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Cannabis documents referenced:

**045.001**

Comment text: 1.discrepancies and increases in riparian area setbacks for watercourses and wetlands.

This will primarily prove challenging for Tier 2 enrollees whose cultivation areas currently may utilize a 50 foot setback from wetlands and Class III watercourses and 100 foot setbacks from Class I/II watercourses. Under the Draft State Order, operators now face setbacks increases of 50, 100, or even 150 feet, depending on topography, type of feature, and stream classification.  
END

### Humboldt Sun Growers Guild

#### Flow requirements, narrative (FR)

**FR-02**

**Summary comment: The forbearance period is too restrictive. The forbearance period doesn't take into consideration regional differences. END**

*Summary response: The State Water Board had to develop a statewide Policy that could be put in effect by January 1, 2018. The tight time frame for policy development did not allow the State Water Board to develop regional forbearance periods. Instead, the State Water Board had to develop a forbearance period that would be protective statewide. A typical outdoor cannabis cultivation site requires the most water at the same time that the majority of the state's water bodies are in their lowest flow period (summer to fall). Accordingly, the most significant impacts from water diverted for cannabis cultivation occur during the dry season. Increased diversion during this period greatly affects the quantity and quality of water available, negatively impacts designated beneficial uses, and threatens the survival of endangered salmon, steelhead, and other aquatic life. In an effort to minimize the impacts that may occur from current and anticipated increased levels of cannabis cultivation, the Policy includes a forbearance period, during which water diversions for cannabis cultivation are prohibited.*

*To ensure protection of salmonid species from the adverse effects of diversions during low flow periods, diversions are not permitted during the late spring, summer, or fall months, when streamflow is especially important to anadromous salmonid populations. The wet season diversion period (diversion period) is therefore restricted to the period of higher flows, from as early as November 1 to March 31, when water is most available and impacts on fishery resources will be minimized. As the State Water Board begins to develop regional policies or makes updates to the interim Policy, forbearance periods may be adjusted as necessary to protect water quality and designated beneficial uses.*

*The Policy has been amended to address the possibility of disruption for existing cannabis cultivators. Cannabis cultivators enrolled under the cannabis orders adopted by the North Coast Regional Water Board and Central Valley Regional Water Board are not required to enroll in the statewide cannabis General Order until July 1, 2019. This grace period allows existing enrollees time to install the necessary storage to comply with the Policy's forbearance period.*

END

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Cannabis documents referenced:

**052.004**

Comment text: "Forbearance Period.....April 1- Oct 31"

This forbearance period is not the same as the North Coast Regional Water Board forbearance period of May 15-Oct 31. The proposed SWB period would reduce the ability of local farms to collect and store water for an additional month and a half. We request that the regional forbearance period in the North Coast region be observed as our area is known to receive more annual rainfall in general compared to the rest of the state. Having the same forbearance period for Southern California and the North Coast Region seems unreasonable considering the vast variance in rainfall across the state. END

### Grandfather coverage (GR)

**GR-03**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: Are all existing farms enrolled under Regional Water Board orders need to halt operations to requirements of the Policy that must be completed "prior to commencing any cannabis cultivation activities"? Existing enrollees may have already been working toward compliance with the North Coast Regional Water Board and should be allowed to continue cultivation. END**

Summary response: Existing cannabis cultivators do not have to halt operations, because they will likely continue to operate under their previous authorization. However, if they are required to submit a Site Erosion Sediment Control Plan, or a Soil Stabilization Plan, they should make those submittals early and obtain Regional Water Board Executive Officer approval so they are not delayed once they transition to the Cannabis General Order.

All other requirements (e.g., obtaining Section 404/401 permits, lake and streambed alteration agreements, etc.) remain in effect. END

Cannabis documents referenced: Policy & Order Att A, Section 1 Gen Req & Prohib 1, 3, 8; Att A Section 2 Req 42.

#### 052.001

Comment text: "Prior to commencing any cannabis cultivation activities..." The majority of farms applying for cultivation permits were existing before new regulations were passed. Does this statement apply to all farms? This would seem to put a halt to all operations for a period of time after the State Water Board regulations are passed as farms enroll, pay fees and submit proper paperwork. This statement should be amended to allow existing farms in operation prior to the passing of these regulations to continue to operate. They have already been working toward compliance with the North Coast Regional Water Board and should be allowed to continue cultivation in good faith that they will adopt and adhere to the new State Water Board regulations in a timely manner. END

### Setbacks (SB)

#### SB-01

**Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END**

Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END

Cannabis documents referenced:

#### 052.002

Comment text: "Cannabis cultivators shall comply with the minimum riparian setbacks described below...."

These setbacks are similar but not the same as the North Coast Regional Water Board setbacks implemented August 2015. Local farms have already invested heavily in complying with regional requirements. Some farms may be unable to comply with State proposed setbacks due to a difference of 50ft. We propose that the Regional Water Board be able to make site specific allowances for farms that have complied with regional setbacks but may not be able to comply with state setbacks. END

### Water diversion, storage (WS)

#### WS-02

**Summary comment: If a cultivator does not have internet access, there should be an alternative option for checking their assigned watershed gage, either via phone or other method determined by the SWB. END**



## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: As stated in the Policy, compliance gages will be assigned using existing gages. The flow requirements will be applied at these gages which are reported on one of two sites: (1) the United States Geological Survey – National Water Information System (NWIS); or (2) California Department of Water Resources (DWR) – California Data Exchange Center (CDEC). These websites are accessible by anyone, including public radio and community resource centers. Cannabis cultivators in ungaged watersheds may be required to install a gage if information indicates that use of the assigned gage does not adequately protect instream flows. The State Water Board will monitor where cannabis cultivation diversions are located to track areas where locally concentrated cannabis cultivation water diversions within a watershed may adversely affect instream flows.*

*Additionally, the State Water Board is developing an online mapping tool to assist cannabis cultivators with determining which compliance gage applies to them and whether they may divert water. It is anticipated that the online mapping tool will allow cannabis cultivators to enter their address or otherwise locate their point of diversion to identify their assigned watershed compliance gage. The compliance gage assignments may change as more information becomes available. To ensure cannabis cultivators are reporting in accordance with the appropriate gage, the cannabis cultivator is required to check the website for their compliance gage assignment at least daily and prior to diverting water to ensure water is available to divert at that gage (i.e., the real-time daily average flow is greater than the Numeric Flow Requirement at the assigned compliance gage).*

*Ultimately it is the responsibility of the cannabis cultivator to ensure compliance with the requirements of the Policy. This may require some cannabis cultivators to work with local cooperatives, community centers, or other industry groups to develop ways to properly obtain flow information during the diversion season. Such methods could include, but are not limited to, phone lines with diversion information or posted signs on common roads. This requirement is consistent with other water right requirements. As normalized, legal businesses, cannabis cultivators are encouraged to develop information infrastructure, such as internet access or local cooperatives, that is typical of other businesses.*

*END*

*Cannabis documents referenced:*

#### **052.005**

Comment text: "...required to check the website for their compliance gage assignment at least daily..."

This can be restrictive and an unreasonable expectation for rural farms without internet access. If a cultivator does not have internet access, there should be an alternative option for checking their assigned watershed gage, either via phone or other method determined by the SWB. END

## **Water rights (WR)**

### **WR-10**

**Summary comment: Daily monitoring is excessive and expensive. The policy should just require monthly records END**

*Summary response: Cannabis cultivators are required to maintain records of daily diversion and use of water related to cannabis cultivation activities. Daily records ensure compliance with the daily flow requirements. There may be certain times in a month where diversions are not allowed. Monthly records would not be able to show whether or not a diverter was in compliance with such a requirement. Additionally, requiring daily diversion records forces cannabis cultivators to monitor their diversion works and compliance gages more regularly to make sure bypass flows are being met. Daily diversion records are required to be kept at the cultivation or diversion site and made available upon request. In addition to daily records, similar to requirements for other water users, water use reports shall be filed on an annual basis and shall document diversions by month made during the previous calendar year. END*

*Cannabis documents referenced:*

#### **052.003**

Comment text: "...cultivators shall maintain daily records of all water used for irrigation of cannabis."

This seems appropriate for the first year to gather data for water storage estimates, but is an excessive requirement for every season thereafter. This requirement is very strict in comparison to other ag crops in California. END

## **Integrous Choice LLC**

### **Fees (FE)**

#### **FE-03**

**Summary comment: What fees will exempt dischargers (indoor cannabis cultivation) be required to pay? END**

*Summary response: The application fee for exempt discharger (indoor cannabis cultivation) is \$600 for the five year term of the order (waiver of WDR) coverage. There will be no annual fee on top of the application fee for exempt dischargers under the Cannabis General Order.*

*However, the cultivator must address the wastewater discharged from an indoor cultivation facility. Depending on the discharge permitting mechanism (to municipal sewer, or to land), the discharger may be required to pay a separate discharge permit fee by either the local sewer authority or obtain WDRs for the onsite wastewater discharge from the Regional Water Board. END*

*Cannabis documents referenced: Order Finding 41c.*

#### **066.001**

Comment text: Will I still have to pay an annual fee on top of the application fee even if I am considered Exempt? END

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**International Cannabis Farmers Association**

**Cost of compliance (CS)**

**CS-02**

**Summary comment: Review the requirement to use qualified professionals to determine if necessary considering the cost and burden of hiring specialists. END**

*Summary response: Use of qualified professionals ensures that work is performed by qualified individuals. This is consistent with the California Business and Professions Code, which requires technical reports that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, to be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. See the definition of qualified professional in the Cannabis Policy and General Order Attachment A for a list of other professionals that may supervise technical report preparation.*

*The due date for certain technical reports has been removed from the Cannabis General Order to allow cannabis cultivators to submit the reports in accordance with their schedule for conducting cultivation and cultivation-related activities. Additionally, applicants that are currently enrolled in the North Coast Regional Water Board's Conditional Waiver of WDRs or the Central Valley Regional Water Board's General WDRs will not be required to enroll under the Cannabis General Order until July 2019. END*

*Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Att A: Sec 1, pg 9, Item 5; Att A: Sec 2, pg 20, Item 5; Att A: Sec 2, pg 21, Items 8-9; Att A: Sec 2, pg 22, Items 13-14; Att A: Sec 2, pg 23, Item 23; Att A: Sec 2, pg 24, Items 26-27, 29-31; Att A: Sec 2, pg 26, Item 41; Att A: Sec 2, pg 28, Item 48; Att A: Sec 2, pg 29, Item 56; Order: Att D, pg D-4 through D-5 & D-9 through D-10*

**063.002**

Comment text: 2. The timelines associated with the development of new WRPP's and addendums must take into consideration the availability of local reputable and available consultants, contractors, engineers, and regulatory agency staff. ...farmers in the North Coast and Central Valley regions have repeatedly reported long wait lists for hired services and extreme lag times associated with the deliverables promised by hired professionals. END

**Flow requirements, numeric (FN)**

**WS-02**

**Summary comment: If a cultivator does not have internet access, there should be an alternative option for checking their assigned watershed gage, either via phone or other method determined by the SWB. END**

*Summary response: As stated in the Policy, compliance gages will be assigned using existing gages. The flow requirements will be applied at these gages which are reported on one of two sites: (1) the United States Geological Survey – National Water Information System (NWIS); or (2) California Department of Water Resources (DWR) – California Data Exchange Center (CDEC). These websites are accessible by anyone, including public radio and community resource centers. Cannabis cultivators in ungaged watersheds may be required to install a gage if information indicates that use of the assigned gage does not adequately protect instream flows. The State Water Board will monitor where cannabis cultivation diversions are located to track areas where locally concentrated cannabis cultivation water diversions within a watershed may adversely affect instream flows.*

*Additionally, the State Water Board is developing an online mapping tool to assist cannabis cultivators with determining which compliance gage applies to them and whether they may divert water. It is anticipated that the online mapping tool will allow cannabis cultivators to enter their address or otherwise locate their point of diversion to identify their assigned watershed compliance gage. The compliance gage assignments may change as more information becomes available. To ensure cannabis cultivators are reporting in accordance with the appropriate gage, the cannabis cultivator is required to check the website for their compliance gage assignment at least daily and prior to diverting water to ensure water is available to divert at that gage (i.e., the real-time daily average flow is greater than the Numeric Flow Requirement at the assigned compliance gage).*

*Ultimately it is the responsibility of the cannabis cultivator to ensure compliance with the requirements of the Policy. This may require some cannabis cultivators to work with local cooperatives, community centers, or other industry groups to develop ways to properly obtain flow information during the diversion season. Such methods could include, but are not limited to, phone lines with diversion information or posted signs on common roads. This requirement is consistent with other water right requirements. As normalized, legal businesses, cannabis cultivators are encouraged to develop information infrastructure, such as internet access or local cooperatives, that is typical of other businesses.*

*END*

*Cannabis documents referenced:*

**063.003**

Comment text: we respectfully request that the state prioritize the development of network compliance gauges in the North Coast and Central Valley regions and expand the notification process to include an electronic notification system and printable daily levels that can be distributed through a variety of means such as public radio, community resource centers and on community notice boards. END

**Grandfather coverage (GR)**

**GR-02**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: North Coast cultivators have been encouraged to get to the “front of the line” with regulatory planning and permitting. Over the past two years, investment has been made in property-wide plans in consultation with professionals and agency staff. The new statewide Order needs to have a mechanism for incorporating farms already enrolled in the Regional Order and must allow farmers to continue operating with their established Water Resources Protection Plans and timelines for remediation.**

**END**

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Summary response: The Cannabis Policy and General Order have a process for existing enrollees to transition to the General Order. Existing enrollees are allowed to continue operating under their existing authorization until July 1, 2019. They may transition earlier if they prefer.

The Cannabis General Order requires a Site Management Plan, which is a report similar to the Water Resource Protection Plan that is required by the North Coast Regional Water Board Conditional Waiver of WDRs. Development of the Site Management Plan should involve relatively minor revision to the Water Resource Protection Plan to comply with the Cannabis General Order.

If at the time of transitioning coverage to the Cannabis General Order, the cultivators with an existing Water Resources Protection Plan have not completed its remediation work, the cultivators should submit the Site Management Plan (which should be very similar to their Water Resources Protection Plans) and include any previously agreed upon schedule for site improvements. Because the Regional Water Board previously approved the schedule, the update should be a relative minor process. **END**

Cannabis documents referenced: Policy Section 5 Site Management Plan pg 69; Order Attachment D.

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#### **063.001**

Comment text: 1.The SWRCB should develop a pathway for farmers currently enrolled in the North Coast and Central Valley Regional Wastewater Discharge Programs that honors the farmer's current WRPP. **END**

#### **GR-04**

**Summary comment: The state should advocate for the ability to develop site specific Watershed Resource Protection Plans. Many farmers in the North Coast and Central Valley regions are already on the path to compliance based on regional regulations involving wildlife and resource protection.**

**END**

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Summary response: The Cannabis General Order requires a similar report titled Site Management Plan. Each Site Management Plan needs to be developed specific to each cultivation site. In addition, cannabis cultivators (and other interested individuals or organizations) may prepare a nonpoint source (NPS) pollution control plan.

The State Water Board's Nonpoint Source Policy requires the Water Boards to regulate all nonpoint sources of pollution, using the administrative permitting authorities provided by the Porter-Cologne Water Quality Control Act. The Cannabis General Order implements the NPS Policy by requiring BPTC measures for site development, cannabis cultivation, associated activities (e.g., site grading, road building, surface water diversion, etc.) that can contribute to nonpoint source pollution.

b. NPS pollution control implementation programs are a mechanism to achieve compliance with Basin Plan requirements. Pollution control implementation programs may be imposed upon a subbasin by the State or Regional Water Board, an individual Discharger, or a coalition of Dischargers. Alternatively, a pollution control implementation program may be developed by an individual Discharger, group of Dischargers, or landowners to address a water quality issue. **END**

Cannabis documents referenced: Policy Section 5 Site Management Plan pg 69; Order Attachment D.

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#### **063.004**

Comment text: 4.The state should advocate for the ability to develop site specific Watershed Resource Protection Plans. Many farmers in the North Coast and Central Valley regions are already on the path to compliance based on regional regulations involving wildlife and resource protection. **END**

#### **Regulatory structure (RS)**

#### **RS-15**

**Summary comment: Make rules and regulations set by NC Regional Water Board order as standard statewide. Proposed General Order and Policy will replace the NC Regional Water Board AND CV Regional Water Board pilot programs and prohibit the development of site-specific watershed resource protection plans and additional financial burden on cannabis farmers. The proposed regulations should be closer to the North Coast Order, which considers the unique environment and was developed with local input. (19.004, 27.002,28.001, 57.001, 63.005, 64.004, 65.001) **END****

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## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: Because the North Coast Regional Water Board adopted a waiver of WDRs, the authority to cover cultivators ends five years after adoption. By law, waivers of WDRs expire five years after adoption. It is more practical to cover the cultivation activities using a general order that does not expire and can be renewed.*

*The State Water Board worked with the Regional Water Boards and modeled the statewide Cannabis General Order on the North Coast Regional Water Board and Central Valley Regional Water Board orders. Because those orders were not consistent and the State Water Board is required to comply with Water Code section 13149 (passed by the Legislature in 2016 under Senate Bill 837), the Cannabis General Order is not entirely consistent with either of the orders. However, the Cannabis General Order does not disregard the previous compliance efforts. It includes a compliance schedule and allows for a site-specific compliance schedule for those sites with longer term implementation plans. Because the North Coast Regional Water Board approved the previous compliance plans, there is no reason to believe they would not renew the existing agreements.*

*Further, the Cannabis Policy and General Order have been revised in two ways to address the impacts to those enrollees under the existing Regional Water Board cannabis order. The first change is an extension of the transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019, allowing an extra year for cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the statewide Cannabis General Order adoption date will be allowed to continue operating with the originally approved Regional Water Board setbacks if the Executive Officer of the applicable Regional Water Board determines that the reduced setbacks will be protective of water quality.*

*END*

*Cannabis documents referenced: CCP pg. 5, CCP Staff Rpt pg. 28,*

#### 063.005

Comment text: Currently, the proposed regulations are designed to replace the NCRWQCB and CVRWQCB pilot programs and in doing so create additional required criteria, prohibit the development of site specific Watershed Resource Protection Plans, and add a layer of prohibitions that undoubtedly will pose significant financial and compliance burdens on farmers engaged in cannabis cultivation. END

### Johnson, Jacob

#### Application for coverage (AP)

##### AP-04

**Summary comment: Sites under 2,000 square feet should not be required to register or enroll in the Cannabis General Order. END**

*Summary response: The commenter does not state why sites under 2,000 square feet should not be required to register or enroll. However, the potential water quality degradation from small sites, especially those that are not required to comply with the best practicable treatment or control measures can be significant. Therefore, it is appropriate for such sites to be required to comply with the Cannabis Policy and General Order. Furthermore, all commercial cultivation activities (commodities that are destined for the medical or recreational marketplace) are required to register or enroll under the Cannabis General Order. Compliance with the Cannabis General Order is required for a cultivator to obtain a CDFA cultivation license. For non-commercial activities, the Cannabis General Order provides personal use exemptions for medical or recreational cultivation activities. Sites that have a total disturbed area under 1,000 square feet and qualify for a personal use exemption are not required to register or enroll under the Cannabis General Order. A change was not made in response to the comment. END*

*Cannabis documents referenced: Policy: pg 13, par 3, 5; Policy: pg 14, par 8; Policy: pg 15, par 8; Policy: pg 18, par 2-3; Order: pg 2, F7.a; Order: pg 3, F7.c; Order: pg 4, F10, 12; Order: pg 5, F13; Order: pg 12, F41.a; Order: pg 13, F41.d*

#### 076.006

Comment text: I propose that the smallest of farmers, Type 1C cottage 25 outdoor licensed farmers be exempt from the majority of this proposed new order. Or that you change it to be more like the North Coast Regional Order. END

##### AP-12

**Summary comment: Areas used for cultivation of food for personal consumption that are on the same property as the cannabis cultivation should not be considered part of the total cultivation area. END**

*Summary response: The Cannabis Policy and Cannabis General Order regulate cannabis cultivation activities and other activities associated with cannabis cultivation. Cultivation of food for personal consumption is not regulated under the Cannabis Policy or the Cannabis General Order and therefore are not considered to be part of the cannabis cultivation area. END*

*Cannabis documents referenced: Att A: Overview, pg 3, Item 4; Policy: Att B, pg 1, par 8; Staff rpt: App 3, pg 1, par 8*

#### 076.007

Comment text: Finally, I would also highly recommend that both the North Coast Order and the statewide Order be changed to allow food for personal consumption being cultivated on the same property should NOT be considered part of the total cultivation area for which we have to pay fees. It is highly punitive to have to pay fees to grow your own food not for commercial purposes. END

### Cost of compliance (CS)

#### CS-02

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

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**Summary comment: Review the requirement to use qualified professionals to determine if necessary considering the cost and burden of hiring specialists. END**

Summary response: Use of qualified professionals ensures that work is performed by qualified individuals. This is consistent with the California Business and Professions Code, which requires technical reports that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, to be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. See the definition of qualified professional in the Cannabis Policy and General Order Attachment A for a list of other professionals that may supervise technical report preparation.

The due date for certain technical reports has been removed from the Cannabis General Order to allow cannabis cultivators to submit the reports in accordance with their schedule for conducting cultivation and cultivation-related activities. Additionally, applicants that are currently enrolled in the North Coast Regional Water Board's Conditional Waiver of WDRs or the Central Valley Regional Water Board's General WDRs will not be required to enroll under the Cannabis General Order until July 2019. END

Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Att A: Sec 1, pg 9, Item 5; Att A: Sec 2, pg 20, Item 5; Att A: Sec 2, pg 21, Items 8-9; Att A: Sec 2, pg 22, Items 13-14; Att A: Sec 2, pg 23, Item 23; Att A: Sec 2, pg 24, Items 26-27, 29-31; Att A: Sec 2, pg 26, Item 41; Att A: Sec 2, pg 28, Item 48; Att A: Sec 2, pg 29, Item 56; Order: Att D, pg D-4 through D-5 & D-9 through D-10

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**076.008**

Comment text: please make sure that the Order paperwork can be completed in its entirety by the farmer himself without the need to hire specialized individuals to complete our paperwork. END

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#### Flow requirements, narrative (FR)

##### SB-01

**Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END**

Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END

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Cannabis documents referenced:

**076.002**

Comment text: The requirements for set back distances and forbearance are severe and would block many North Coast farmers from being able to participate in the order at all without extreme financial hardship that would create a certain barrier to entry for the smallest of farmers in particular, and derail the entire intent of the Order to mitigate the environmental impacts on our watersheds. END

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#### Grandfather coverage (GR)

##### GR-01

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*

*END*

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Cannabis documents referenced:

#### 076.004

Comment text: We should be able to remain under the North Coast Order, for at least 5 years as we were originally granted, or we should be grandfathered into the statewide order but only be required to comply with the distances and other further requirements of the North Coast Order. END

### Setbacks (SB)

#### SB-01

***Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END***

*Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END*

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Cannabis documents referenced:

#### 076.001

Comment text: I am strongly opposed to the increases in setback distances from surface water and in the reduction of slope allowance from 35% to 25%, END

#### 076.005

Comment text: Furthermore, the statewide order should be changed to reflect the North Coast Order for the setback distances and slope requirements, particularly for smaller farmers located in the North Coast Region and who had already been enrolled with our North Coast Regional Order. END

#### SB-06

***Summary comment: The huge setbacks required for the huge industrial operations throughout the state won't be needed with our farms which are tiny in comparison END***

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: Setback requirements are not based on the size of a cultivation site but rather on the proximity of cultivation site features to sensitive waters. Additionally, the Cannabis General Order requirements have been modified in two ways based on comments and now provide greater flexibility on setback measures.*

*The Cannabis Policy and General Order have been revised in two ways to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs*

*The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing and enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality.*

*END*

*Cannabis documents referenced:*

#### **076.003**

Comment text: I believe the proposed regulations would only work for the largest of farms, those cultivating Type 3 licenses only. Those of us with Type 1 licenses, and I believe also many with Type 2, will suffer greatly from these proposed changes or will not be able to participate in the program at all due to exorbitant costs or inability to move their garden site to the new required setback distances. I believe these requirements are severe and excessive, and I don't believe these requirements are necessary in order for a small farm such as a cottage Type 1c farm to be able to demonstrate no negative environmental impacts. END

### **Klingenberg, Jonathan**

#### **Cost of compliance (CS)**

##### **CS-16**

**Summary comment: Some of the terms in Attachment A may be unnecessarily overly restrictive and pose challenges for implementation or impose increased costs without environmental benefit.**

**The proposed requirements would cause myself and many other farmers throughout the county massive economic hardship at a time when our region can ill afford it**

**END**

*Summary response: The cost of compliance is an unavoidable part of implementing any water quality control policy that will both protect and enhance the existing environment and incorporate oversight for those protections. Direct cost analysis of the Cannabis Policy has been developed and can be found under Item 6 at the State Water Board's October 17, 2017 meeting agenda, which is available online at: [https://www.waterboards.ca.gov/board\\_info/agendas/2017/oct/101717\\_agenda.pdf](https://www.waterboards.ca.gov/board_info/agendas/2017/oct/101717_agenda.pdf). There are two main costs: costs associated with regulatory oversight, and cost associated with cultivation site measures. Regulatory oversight costs are required to fund the state programs that both monitor and enforce the Cannabis Policy requirements. Regulatory costs are set by what funding is reasonably needed to perform those monitoring and enforcement tasks.*

*The State Water Board developed the Policy and associated requirements based on the practicalities of cannabis cultivation operations and the reality of water quality- and aquatic habitat-related impacts from cannabis cultivation in California. Compared to other irrigated agriculture, there are tangible differences in how and where cannabis is grown - detailed in the Staff Report - that militate in favor of cannabis-specific requirements that in many cases differ from requirements applicable to other irrigated agriculture. To give one example, cannabis cultivation operations tend to be concentrated high in the watershed, near headwaters or small tributaries that are more sensitive to waste discharges and water diversions than larger streams that flow at lower elevations. In contrast, much of California's irrigated agriculture occurs on flat and/or open terrain where any nearby waterbodies are less sensitive to changes in diversion patterns or waste discharges. Additionally, land disturbance activities associated with irrigated agriculture more frequently occur far enough away from nearby waterbodies that express riparian setback requirements are unnecessary.*

*Additionally, changes have been made to the Cannabis General Order that will potentially lower the costs of compliance for cannabis cultivators enrolled in an existing waste discharge requirement program. The first change is an extension of the transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019, allowing an extra year for cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the Cannabis General Order adoption date will be allowed to continue operating with the originally approved Regional Water Board setback if the Executive Officer of the applicable Regional Water Board determines that the setbacks will be protective of water quality.*

*END*

*Cannabis documents referenced: Add reference to Direct Cost Analysis when we know where it will be.*

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

027.001

Comment text:

The proposed requirements would cause myself and many other farmers throughout the county massive economic hardship at a time when our region can ill afford it END

#### Grandfather coverage (GR)

GR-01

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.

The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).

California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.  
END

Cannabis documents referenced:

027.003

Comment text: current Enrollees under Regional Order should be allowed to continue operating for the duration of the regional order. END

#### Regulatory structure (RS)

RS-15

**Summary comment: Make rules and regulations set by NC Regional Water Board order as standard statewide. Proposed General Order and Policy will replace the NC Regional Water Board AND CV Regional Water Board pilot programs and prohibit the development of site-specific watershed resource protection plans and additional financial burden on cannabis farmers. The proposed regulations should be closer to the North Coast Order, which considers the unique environment and was developed with local input. (19.004, 27.002,28.001, 57.001, 63.005, 64.004, 65.001) END**

Summary response: Because the North Coast Regional Water Board adopted a waiver of WDRs, the authority to cover cultivators ends five years after adoption. By law, waivers of WDRs expire five years after adoption. It is more practical to cover the cultivation activities using a general order that does not expire and can be renewed.

The State Water Board worked with the Regional Water Boards and modeled the statewide Cannabis General Order on the North Coast Regional Water Board and Central Valley Regional Water Board orders. Because those orders were not consistent and the State Water Board is required to comply with Water Code section 13149 (passed by the Legislature in 2016 under Senate Bill 837), the Cannabis General Order is not entirely consistent with either of the orders. However, the Cannabis General Order does not disregard the previous compliance efforts. It includes a compliance schedule and allows for a site-specific compliance schedule for those sites with longer term implementation plans. Because the North Coast Regional Water Board approved the previous compliance plans, there is no reason to believe they would not renew the existing agreements.

Further, the Cannabis Policy and General Order have been revised in two ways to address the impacts to those enrollees under the existing Regional Water Board cannabis order. The first change is an extension of the transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019, allowing an extra year for cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the statewide Cannabis General Order adoption date will be allowed to continue operating with the originally approved Regional Water Board setbacks if the Executive Officer of the applicable Regional Water Board determines that the reduced setbacks will be protective of water quality.  
END

Cannabis documents referenced: CCP pg. 5, CCP Staff Rpt pg. 28,



**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**027.002**

Comment text: The NCRWQCB carefully weighed these factors when drafting and implementing the current Order and I urge the State Water Resource Control Board to defer to this regional expertise and locally appropriate solution.

...

In light of that environmental review, it should be held as being evident that the NCRWQCB Order goes beyond adequate in its protection of our regional water quality and should be continued for its intended 5-year duration.

The regional Water Boards are well positioned to evaluate conditions within the nine regions and where the SWRCB General Order conflicts with a regional order, the General Order should defer to the local expertise of the Regional Boards. Ideally, the SWRCB General Order should allow the Regional Board's to retain enough flexibility to implement locally appropriate solutions that are equally protective of water quality. END

**Lady Sativa Farm**

**Flow requirements, narrative (FR)**

**FR-05**

**Summary comment: Extending the forbearance period into April is not protective as there are still significant flows in the river. END**

*Summary response: To ensure protection of salmonid species from the adverse effects of diversions during low flow periods, diversions are not permitted during the late spring, summer, or fall months, when streamflow is especially important to anadromous salmonid populations. While the flow in the streams may be considered significant by some, it is of importance to salmonid populations that may be present. Commencing the forbearance period in early April is appropriate to protect salmonid populations and aquatic resources. END*

*Cannabis documents referenced:*

**024.001**

Comment text: Extending the forbearance period until early April does not actually protect river flows – as there are still significant flows in the river. END

**Setbacks (SB)**

**SB-01**

**Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END**

*Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END*

*Cannabis documents referenced:*

**024.002**

Comment text: The e setback of 150 feet from any streambed does not (always) protect streams from waste discharge from garden sites.

We need to have performance standards that we can meet in regional specialized manners. We have a much more contoured landscape and we have a diverse and small scale agriculture model- that is much more environmentally sensitive than large agriculture models. END

**Lanzisera, Francesco**

**Grandfather coverage (GR)**

**GR-01**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*  
END

*Cannabis documents referenced:*

#### 004.001

Comment text: I want to encourage an overlap of compliance from the North Coast Water Boards division of cannabis to the State Water board in Sacramento. We up North have all worked hard through fees and efforts to comply and it seems unnecessary and irrational to give us a whole new set of rules to comply with. END

#### 007.001

Comment text: I would like to suggest that we should be grandfathered in for a 5 year period based on the North Coast Regional Water Board regs that we have already taken the time and money to comply with. END

### Water diversion, storage (WS)

#### FR-01

**Summary comment: The Policy should implement a grace period to allow for the installation of storage facilities END**

*Summary response: The Policy has been updated to provide a waiver of the 2018 surface water dry season forbearance period (April 1, 2018 through October 31, 2018), with certain conditions, so that cannabis cultivators may divert during this period in a manner consistent with their water right or claim of right. Cultivators that make use of this waiver are required to: file for a Cannabis Small Irrigation Use Registration (SIUR) or submit an application for an appropriative water right permit to prepare for potential curtailment during the dry season of 2018 (triggered by Aquatic Base Flow Numeric Instream Flow Requirement); and install storage as soon as possible after storage has been authorized following the conclusion of the winter period. All water must be diverted under a valid basis of right and all cannabis cultivators will be subject to the aquatic base flow requirements put forth in the Policy. Further, all storage shall be installed in accordance with the Policy and General Order, which include requirements to protect water quality and beneficial uses, including plan development and approval prior to land disturbance, implementation of best practicable treatment controls, and no work during the winter period.* END

*Cannabis documents referenced:*

#### 007.002

Comment text: It will take time for us to develop water storage and implement sustainable best management practices, and its just not realistic to do it all within 4 months. END

### Los Angeles Department of Water and Power

#### Application for coverage (AP)

#### AP-01

**Summary comment: The land owner should be identified in the application and should also be required sign the application. END**

*Summary response: The application has been designed to collect land owner information and contact information. Land owners will be named as responsible parties and will be notified when authorization to cultivate cannabis is provided to an applicant. The Cannabis Policy requires that cannabis cultivators not commit trespass and notes that nothing in the Policy "shall be construed to authorize cannabis cultivation activities on land not owned by the cannabis cultivator without the express written permission of the land owner."* END

*Cannabis documents referenced: Att A: Overview, pg 5, Item 12; Att A: Sec 1, pg 11, Item 16; Att A: Sec 1, pg 15, Item 35*

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

#### 035.003

Comment text: LADWP suggests that applications include a section requiring the identification of the owner of the land, so that there is a mechanism to notify the landowner when an application is submitted. END

#### Definitions (DE)

##### DE-14

**Summary comment: Due to water diversions by cannabis cultivators these waterways could experience reduced flow, despite the Policy's "Prohibition Against Waste and Unreasonable Use of Water." LADWP is concerned with the clarity of the definition of numeric and narrative instream flow requirements, and requests that the determination of minimum acceptable flows be clarified. END**

*Summary response: Nothing in the Cannabis Policy allows a cannabis cultivator to illegally divert water, regardless of the numeric and narrative flow requirements. The priority system of water rights is also unaffected by the Cannabis Policy, thus any reductions in flow in a waterway due to cannabis cultivation would either be from a permitted use or an illegal diversion. END*

*Cannabis documents referenced:*

#### 035.001

Comment text: Due to water diversions by cannabis cultivators these waterways could experience reduced flow, despite the Policy's "Prohibition Against Waste and Unreasonable Use of Water." LADWP is concerned with the clarity of the definition of numeric and narrative instream flow requirements, and requests that the determination of minimum acceptable flows be clarified. END

#### Enforcement (EN)

##### EN-02

**Summary comment: LADWP requests that only the cannabis grower be liable for permit issuance and associated water quality monitoring, and the land owner be indemnified of permit responsibilities. (35.002) END**

*Summary response: The Cannabis Policy and General Order define cannabis cultivator and landowner. Also, cannabis cultivators shall not commit trespass. The land owner is ultimately responsible for any water quality degradation that occurs on or emanates from its property and for water diversions that are not in compliance with this Policy. Land owners will be named as responsible parties and will be notified if a Cannabis General Order Notice of Applicability or conditional exemption has been issued for cannabis activities on their property. The cannabis cultivator and the land owner will be held responsible for correcting non-compliance with this Policy. END*

*Cannabis documents referenced: CCP Attachment A, Definitions No. 9, pg. 4*

#### 035.002

Comment text: LADWP requests that only the cannabis grower be liable for permit issuance and associated water quality monitoring, and the land owner be indemnified of permit responsibilities. END

#### Manhard Consulting

#### Definitions (DE)

##### DE-13

**Summary comment: Manhard Consulting suggests utilization of the current stream classification system based on presence of aquatic life and stream flow rather than reclassifying springs and seeps as a Class I watercourse. Manhard Consulting suggests that springs be defined separately in accordance with existing watercourse definitions. END**

*Summary response: The term "seep" has been removed from the Cannabis Policy. What was intended to be protected under the term "seep" will be protected under requirements for springs/artesian wells and/or wetlands as applicable. The riparian setback conditions of springs have also been modified to clarify the intent of classifying springs under Class I watercourses. Language has been added to Attachment A of the Cannabis Policy (Watercourse definition and Requirement 37 of Section 1 on Minimum Riparian Setbacks) to define a spring and distinguish between the setback around the head of a spring and the setback below the head of a spring. Additionally, the watercourse definitions have been updated to more closely align with the Forest Practice Rules. Information has been added to the Staff Report regarding the importance of springs and headwaters to the ecological health of watersheds. END*

*Cannabis documents referenced:*

#### 057.002

Comment text: Manhard Consulting suggests utilization of the current stream classification system based on presence of aquatic life and stream flow rather than reclassifying springs and seeps as a Class I watercourse. END

#### 057.003

Comment text: Manhard Consulting suggests that springs be defined separately in accordance with existing watercourse definitions. END

#### Flow requirements, numeric (FN)

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

#### WS-02

**Summary comment: If a cultivator does not have internet access, there should be an alternative option for checking their assigned watershed gage, either via phone or other method determined by the SWB. END**

*Summary response: As stated in the Policy, compliance gages will be assigned using existing gages. The flow requirements will be applied at these gages which are reported on one of two sites: (1) the United States Geological Survey – National Water Information System (NWIS); or (2) California Department of Water Resources (DWR) – California Data Exchange Center (CDEC). These websites are accessible by anyone, including public radio and community resource centers. Cannabis cultivators in ungaged watersheds may be required to install a gage if information indicates that use of the assigned gage does not adequately protect instream flows. The State Water Board will monitor where cannabis cultivation diversions are located to track areas where locally concentrated cannabis cultivation water diversions within a watershed may adversely affect instream flows.*

*Additionally, the State Water Board is developing an online mapping tool to assist cannabis cultivators with determining which compliance gage applies to them and whether they may divert water. It is anticipated that the online mapping tool will allow cannabis cultivators to enter their address or otherwise locate their point of diversion to identify their assigned watershed compliance gage. The compliance gage assignments may change as more information becomes available. To ensure cannabis cultivators are reporting in accordance with the appropriate gage, the cannabis cultivator is required to check the website for their compliance gage assignment at least daily and prior to diverting water to ensure water is available to divert at that gage (i.e., the real-time daily average flow is greater than the Numeric Flow Requirement at the assigned compliance gage).*

*Ultimately it is the responsibility of the cannabis cultivator to ensure compliance with the requirements of the Policy. This may require some cannabis cultivators to work with local cooperatives, community centers, or other industry groups to develop ways to properly obtain flow information during the diversion season. Such methods could include, but are not limited to, phone lines with diversion information or posted signs on common roads. This requirement is consistent with other water right requirements. As normalized, legal businesses, cannabis cultivators are encouraged to develop information infrastructure, such as internet access or local cooperatives, that is typical of other businesses.*

*END*

*Cannabis documents referenced:*

#### 057.016

*Comment text: Section 3 – Numeric and Narrative Instream Flow Requirements (Including Gaging): SW RCB should consider that not every cultivator has daily, reliable internet access and it is unrealistic to expect cultivators to check a website daily. Weekly or monthly instream flow forecasts based on predicted precipitation levels would be practical and more accessible to cultivators living off-the-grid. Manhard Consulting suggests that cultivators should be required to check weekly or monthly predicted flow levels before diverting to accommodate off-grid cultivators without daily internet access. END*

#### Regulatory structure (RS)

##### RS-01

**Summary comment: SWRCB General Order should allow the Regional Boards more flexibility and deferment to implement locally appropriate solutions. Enrollees under a Regional Board order shall be allowed to continue until it expires. Allow each region to develop its own program or opt to use the new State Order. North Coast Region may use their existing Order and cannabis farmers can continue on their compliance track, or farmers that have enrolled in the Regional Board order shall be allowed to continue to work under existing conditions and thus be grandfathered in. Does the General Order allow Regional Boards to develop site-specific orders for those that do not fit into SWRCB General order?(15.004) (74.005) (77.002) (17.014) (18.004), (38.004). END**

*Summary response: The Cannabis General Order provides a transition period until July 1, 2019 for enrollees under the existing Regional Water Board orders. They may transition sooner if they prefer. Those cultivators that have initiated remedial activities at their facilities will not be penalized because the Cannabis General Order requires similar activities.*

*The Cannabis General Order does allow Regional Water Boards the alternative of preparing a region specific general order or site specific WDRs. However, California Water Code Sections 13146 and 13263 require that WDRs implement any applicable water quality control plan or policy. Any general order or site-specific order adopted by a Regional Water Board must be consistent with the requirements of the Cannabis Policy. Therefore, any region specific general order would be very similar to the Cannabis General Order. END*

*Cannabis documents referenced: CCP Staff Rpt pg. 28, GO 6b, pg. 2*

#### 057.001

*Comment text: the NCRWQCB's Waste Discharge requirements should remain an option to cultivators in the North Coast Region END*

#### Setbacks (SB)

##### DE-13

**Summary comment: Manhard Consulting suggests utilization of the current stream classification system based on presence of aquatic life and stream flow rather than reclassifying springs and seeps as a Class I watercourse. Manhard Consulting suggests that springs be defined separately in accordance with existing watercourse definitions. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The term "seep" has been removed from the Cannabis Policy. What was intended to be protected under the term "seep" will be protected under requirements for springs/artesian wells and/or wetlands as applicable. The riparian setback conditions of springs have also been modified to clarify the intent of classifying springs under Class I watercourses. Language has been added to Attachment A of the Cannabis Policy (Watercourse definition and Requirement 37 of Section 1 on Minimum Riparian Setbacks) to define a spring and distinguish between the setback around the head of a spring and the setback below the head of a spring. Additionally, the watercourse definitions have been updated to more closely align with the Forest Practice Rules. Information has been added to the Staff Report regarding the importance of springs and headwaters to the ecological health of watersheds. END*

*Cannabis documents referenced:*

#### 057.004

Comment text: This change in classification would put undue burden on cultivators to modify their projects to meet the 150-200 ft. setbacks from seeps. Manhard Consulting suggests that seeps be removed from "Watercourse Class I" definition and instead categorized from biological and botanical assessments on a case by case basis. END

#### SB-01

**Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END**

*Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END*

*Cannabis documents referenced:*

#### 057.005

Comment text: If these new setbacks were imposed, common watercourses like seeps and wetlands would put hundreds of currently compliant cultivators out of compliance. In many instances, cultivators would need to re-design their entire operation, causing economic hardship and potentially more land disturbance. Manhard Consulting recommends that seeps be removed from the Class I category and be assessed on a case by case basis. We recommend 100 ft. setbacks from wetlands to be consistent with other local policies. END

#### Water diversion, storage (WS)

#### WR-10

**Summary comment: Daily monitoring is excessive and expensive. The policy should just require monthly records END**

*Summary response: Cannabis cultivators are required to maintain records of daily diversion and use of water related to cannabis cultivation activities. Daily records ensure compliance with the daily flow requirements. There may be certain times in a month where diversions are not allowed. Monthly records would not be able to show whether or not a diverter was in compliance with such a requirement. Additionally, requiring daily diversion records forces cannabis cultivators to monitor their diversion works and compliance gages more regularly to make sure bypass flows are being met. Daily diversion records are required to be kept at the cultivation or diversion site and made available upon request. In addition to daily records, similar to requirements for other water users, water use reports shall be filed on an annual basis and shall document diversions by month made during the previous calendar year. END*

*Cannabis documents referenced:*

#### 057.008

Comment text: Water Storage and Use:

#84 – Measuring Devices:

The Policy should keep in mind that due to isolated locations and adverse winter driving conditions, access to some cultivation sites is often not feasible for daily recording of diversion rates.

Furthermore, many water diversion points are located in isolated locations on the property that take considerable effort to reach. Until such time that cost efficient, automated diversion recording devices become readily available Manhard Consulting suggests that only weekly records of diversion rates be required. END

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

#### WS-01

**Summary comment: Requirement 75 seems to indicate that only fuel powered diversion pumps are allowed. Recommend updating to include solar, electric, gravity fed, and other pumps. END**

*Summary response: The language in the Policy will be updated to reflect that other types of pumps are allowed, and in some cases, even encouraged. END*

*Cannabis documents referenced:*

**057.006**

Comment text: Water Storage and Use:

#75 – Fuel Powered Diversion Pumps:

“Cannabis cultivators shall only use fuel powered diversion pumps...” This language implies that the use of alternative power diversion pumps, such as solar or hydro, are prohibited. Manhard Consulting recommends that the wording in this section be altered to encourage – not discourage – renewable energy-powered pumps. END

#### WS-04

**Summary comment: There are many on-stream ponds that were built prior to 2007 on the north coast. There are also many older ponds where overflow has become a class III channel that does not connect to the stream system. Essentially these ponds are at the head of a class III. These ponds provide much needed storage on these properties. Many people who own these don't even realize they need a water right for these ponds. Many of these properties are not current cannabis farms. Why have a Jan 1 2017 deadline? If the pond is determined to be stable and not a threat to water quality is should be allowed regardless of when the property enters the cannabis process. END**

*Summary response: The State Water Board has done extensive outreach on the north coast regarding water right requirements. Ultimately, it is the responsibility of the property owner and diverter to understand and comply with all applicable water right requirements. (See also, e.g., Wat. Code §1052.) The January 1, 2017 deadline has been updated to October 17, 2017 and is only a cut off for certain existing and permitted onstream reservoirs to qualify for a transfer to the Small Irrigation and Use Registration Program. All unpermitted onstream reservoirs will have to go through the appropriate water right process in order to determine that they are stable and not a threat to water quality or designated beneficial uses.*

*In addition, the Policy requires that all onstream reservoirs used for a cannabis cultivation shall be operated in a manner that is consistent with the requirements of the Policy including, but not limited to, all bypass flow requirements and forbearance periods.*

*END*

*Cannabis documents referenced:*

**057.007**

Comment text: Water Storage and Use:

#82 – Onstream Storage:

The wording of this section is ambiguous. It states, “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,” and continues on to state that “cultivators who do not have an existing water right as of January 1, 2017... are required to obtain an appropriate water right permit prior to diverting water from an onstream storage reservoir for cannabis cultivation.” This should be clarified, since the first sentence expressly forbids the second sentence. Manhard Consulting suggests clarification of the language of this section and transparency regarding the difficulty of obtaining an appropriate water right. END

#### WS-05

**Summary comment: Water Storage and Use:**

**#95– Water Storage Bladders:**

**Section #95 states, “Water storage bladders are not encouraged for long-term use.” Manhard Consulting questions this rationale due to multiple positive benefits of water bladders, particularly on the North Coast. Clearly, cannabis cultivators will need to increase their water storage capacity to meet the new forbearance period requirements under the Policy, and in comparison with other storage devices such as ponds, properly engineered water bladders have many benefits: (1) they don't propagate invasive species; (2) they don't trap and kill wildlife; and (3) they often require less land disturbance to install. Additionally, many water bladders are recyclable once their life use has expired. Rather than discouraging water bladders all together, Manhard Consulting suggests encouraging structurally sound, properly contained water storage bladders due to their ecological benefits in comparison with other storage facilities. END**

*Summary response: State Water Board staff is aware of the environmental impacts that can occur from bladder failure. Additionally, many bladders being used are second hand, were not designed for long term water storage, and may contain residual chemicals that are harmful to environment. The State Water Board sees the potential for bladders and designed Requirement 88 (Requirement 95 in the draft Policy) to allow the use of bladders in a way that is protective of the environment. Requirement 88 (Requirement 95 in draft Policy) states that “Water Storage bladders are not encouraged for long-term use. If bladders are used, the cannabis cultivator shall ensure that the bladder is designed and properly installed to store water and that the bladder is sited to minimize the potential for water to flow into a watercourse in the event of a catastrophic failure. If a storage bladder has been previously used, the cannabis cultivator shall carefully inspect the bladder to confirm its integrity and confirm the absence of any interior residual chemicals prior to resuming use. Cannabis cultivators shall periodically inspect water storage bladders and containment features to ensure integrity. Water storage bladders shall be properly disposed of or recycled and not resold when assurance of structural integrity is no longer guaranteed.” END*

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

*Updated: 10/13/2017*

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*Cannabis documents referenced:*

**057.013**

Comment text: Water Storage and Use:

#95– Water Storage Bladders:

Section #95 states, "Water storage bladders are not encouraged for long-term use." Manhard Consulting questions this rationale due to multiple positive benefits of water bladders, particularly on the North Coast. Clearly, cannabis cultivators will need to increase their water storage capacity to meet the new forbearance period requirements under the Policy, and in comparison with other storage devices such as ponds, properly engineered water bladders have many benefits: (1) they don't propagate invasive species; (2) they don't trap and kill wildlife; and (3) they often require less land disturbance to install. Additionally, many water bladders are recyclable once their life use has expired. Rather than discouraging water bladders all together, Manhard Consulting suggests encouraging structurally sound, properly contained water storage bladders due to their ecological benefits in comparison with other storage facilities.

END

**WS-07**

**Summary comment: The secondary containment for bladders is too large. Requiring 150% secondary containment will cause financial and environmental impacts. END**

*Summary response: Draft Policy Requirement 97 (Requirement 89 in updated Policy) has been updated to reflect a secondary containment of 110 percent for water bladder's capacity. The United States Environmental Protection Agency cites 110 percent as a generally accepted design criterion for secondary containment of tanks. Secondary containment is necessary to avoid erosion and other environmental impacts that may occur after a critical failure of a water bladder. END*

*Cannabis documents referenced:*

**057.014**

Comment text: Water Storage and Use:

#96 – Water Storage Bladder Secondary Containment:

Manhard Consulting questions the logic behind requiring greater than 100% containment of the water bladder's capacity, and is concerned this requirement will lead to more ground disturbance and excessively large excavation areas. Manhard Consulting suggests that a properly engineered secondary containment system with the ability to capture 100% - 120% of the maximum bladder storage capacity is sufficient. END

**WS-08**

**Summary comment: "Cannabis cultivators shall not use off-stream storage reservoirs to store water for cannabis cultivation unless the reservoir is properly sited and has been designed by a qualified professional. Cannabis cultivators shall plant native vegetation along the perimeter of the off- stream storage reservoir."**

**What proof is required and to what standards? Vegetation planted on the berm can result in flow paths along the roots and weight on the berm.**

**END**

*Summary response: The Cannabis Policy (Requirement 86) has been modified to clarify the planting of native vegetation around water storage. The requirement now explains that the vegetation shall be planted in areas that will not impact the structural integrity of the reservoir berm or spillway. Additionally, vegetation management around the reservoir berm and spillway is required to provide for visual inspection and control of burrowing animals, as necessary.*

*The Cannabis Policy requires that off-stream storage reservoirs and ponds shall not be used to store water for cannabis cultivation unless site and designed or approved by a qualified profession in compliance with the Division of Safety of Dams, county, and/or city requirements, as applicable and provides for other design criteria when no such requirements are established.*

**END**

*Cannabis documents referenced:*

**057.011**

Comment text: Water Storage and Use:

#86 – Off-stream Storage Reservoirs:

Manhard Consulting is concerned that cultivators could compromise the integrity of the engineered reservoir structure if native vegetation is planted randomly along the perimeter. If the goal of this section is to promote native vegetation, then specifics of native vegetation planting techniques should be clearly defined. If the goal of this section is to discourage planting invasive species, then the Policy should state so unequivocally. END

**WS-09**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: Water Storage and Use:**

**#86 – Off-stream Storage Reservoirs:**

**Manhard Consulting feels it is crucial to mandate some protections against wildlife entrapment in off-stream storage reservoirs and ponds.**

**Potential solutions to wildlife entrapment include: (1) engineering slopes at 30% or less to allow larger animals to climb out; (2) fencing off reservoir using chicken wire fencing or similarly small-holed fencing material; (3) installing floating or secured water exit devices,4,5**

**(4) lining the reservoir perimeter with jute mesh to help animals climb out; and (5) frequently assessing the reservoir and checking for wildlife. Suggested Policy language could read: “Cannabis cultivators shall implement mechanisms to reduce wildlife entrapment in off- stream storage reservoirs. Storage reservoirs shall be fenced off using suitably small fencing to prohibit wildlife entry. Cannabis cultivators shall also implement wildlife escape mechanisms to ensure protection of endangered and threatened species, and, if possible, engineer off-stream storage reservoirs with maximum 30% slopes.”**

**END**

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*Summary response: The protection of wildlife generally falls under the expertise authority of California Department of Fish and Wildlife (CDFW) and will be authorized and enforced through its Lake and Streambed Alteration Agreement program. Additionally, the Small Irrigation Use Registration (SIUR)water rights program will require cannabis cultivators to include any measures provided by CDFW.*

*These may include site-specific protections against wildlife entrapment in storage reservoirs and ponds covered under the SIUR water rights program. END*

*Cannabis documents referenced:*

**057.010**

Comment text: Water Storage and Use:

#86 – Off-stream Storage Reservoirs:

Manhard Consulting feels it is crucial to mandate some protections against wildlife entrapment in off-stream storage reservoirs and ponds.

Potential solutions to wildlife entrapment include: (1) engineering slopes at 30% or less to allow larger animals to climb out; (2) fencing off reservoir using chicken wire fencing or similarly small-holed fencing material; (3) installing floating or secured water exit devices,4,5

(4) lining the reservoir perimeter with jute mesh to help animals climb out; and (5) frequently assessing the reservoir and checking for wildlife. Suggested Policy language could read: “Cannabis cultivators shall implement mechanisms to reduce wildlife entrapment in off- stream storage reservoirs. Storage reservoirs shall be fenced off using suitably small fencing to prohibit wildlife entry. Cannabis cultivators shall also implement wildlife escape mechanisms to ensure protection of endangered and threatened species, and, if possible, engineer off-stream storage reservoirs with maximum 30% slopes.” END

**WS-10**

**Summary comment: There is concern with the requirement to maintain sufficient freeboard in offstream reservoirs to capture the input from a 25-year, 24 hour storm event. Such design and operation requirements may result in additional costs and unintended consequences. END**

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*Summary response: These Requirements have been updated to reflect the comments received. All off-stream storage reservoirs and ponds shall be designed, managed, and maintained to accommodate average annual winter period precipitation and storm water inputs to reduce the potential for overflow. This will help address the concerns presented in the comments while also minimizing the environmental impacts that occur from reservoirs overflowing. END*

*Cannabis documents referenced: Att. A. Requirement 86*

**057.012**

Comment text: Water Storage and Use:

#87 – Sufficient Freeboard for Off-stream Storage Reservoirs:

If cultivators must plan for “sufficient freeboard” for 25-year storm events, then their ponds could theoretically never be full. It seems that properly engineered spillways or overflow structures referenced in Section #88 would be sufficient in preparing for a 25-year flood event without having to maintain specific water levels or widen the size of their storage. Manhard Consulting recommends removing this clause, as it discourages maximum water storage during the forbearance period and incentivizes more land clearing for even bigger storage facilities. END

**Water rights (WR)**

**WR-09**

**Summary comment: The Policy should implement additional restrictions on hauled water. END**

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*Summary response: Requirement 95 (Requirement 97 in the draft Policy) states that cannabis cultivators using hauled water must retain the appropriate documentation illustrating that the water is being diverted and transported in a legal manner. The State Water Board will evaluate the need for additional requirements on hauled water in future revisions to the Policy based on information gathered during Policy implementation. END*

*Cannabis documents referenced: Requirement 97*

**057.015**



## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: Water Storage and Use:

#97 – Hauled Water:

Bulk water trucking has already been outlawed in multiple counties. Hauled water as the primary source of cultivation irrigation presents multiple issues, including: increased greenhouse gas emissions, increased pressure on infrastructure, and increased traffic in rural areas, and lack of water source accountability. Cultivating cannabis often requires hundreds of thousands of gallons of water (or more) each year, and allowing hauled water to be the primary water source for large cultivations, even with proper documentation, is inefficient and not in the best interests of state water conservation. Manhard Consulting recommends that hauled water is allowed for emergency use only OR that hauled water is only allowed to be the primary irrigation source for small cultivation areas (<5,000 sf) to minimize the amount of trucked water and its impacts.

END

#### WS-02

**Summary comment: If a cultivator does not have internet access, there should be an alternative option for checking their assigned watershed gage, either via phone or other method determined by the SWB. END**

*Summary response: As stated in the Policy, compliance gages will be assigned using existing gages. The flow requirements will be applied at these gages which are reported on one of two sites: (1) the United States Geological Survey – National Water Information System (NWIS); or (2) California Department of Water Resources (DWR) – California Data Exchange Center (CDEC). These websites are accessible by anyone, including public radio and community resource centers. Cannabis cultivators in ungaged watersheds may be required to install a gage if information indicates that use of the assigned gage does not adequately protect instream flows. The State Water Board will monitor where cannabis cultivation diversions are located to track areas where locally concentrated cannabis cultivation water diversions within a watershed may adversely affect instream flows.*

*Additionally, the State Water Board is developing an online mapping tool to assist cannabis cultivators with determining which compliance gage applies to them and whether they may divert water. It is anticipated that the online mapping tool will allow cannabis cultivators to enter their address or otherwise locate their point of diversion to identify their assigned watershed compliance gage. The compliance gage assignments may change as more information becomes available. To ensure cannabis cultivators are reporting in accordance with the appropriate gage, the cannabis cultivator is required to check the website for their compliance gage assignment at least daily and prior to diverting water to ensure water is available to divert at that gage (i.e., the real-time daily average flow is greater than the Numeric Flow Requirement at the assigned compliance gage).*

*Ultimately it is the responsibility of the cannabis cultivator to ensure compliance with the requirements of the Policy. This may require some cannabis cultivators to work with local cooperatives, community centers, or other industry groups to develop ways to properly obtain flow information during the diversion season. Such methods could include, but are not limited to, phone lines with diversion information or posted signs on common roads. This requirement is consistent with other water right requirements. As normalized, legal businesses, cannabis cultivators are encouraged to develop information infrastructure, such as internet access or local cooperatives, that is typical of other businesses.*

END

*Cannabis documents referenced:*

**057.009**

Comment text: Water Storage and Use:

#85 – Electronic Reporting:

the Policy should keep in mind that not every cannabis cultivator has consistent access to internet for reporting. Manhard Consulting suggests that the off-the-grid cultivators are considered in the Policy and language is included to accommodate monitoring and reporting for those without internet access. END

#### Margro Advisors

##### Cost of compliance (CS)

#### CS-17

**Summary comment:**

**“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.” END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: This condition is not intended to require cannabis cultivators to hire qualified biologists to do unnecessary work. Cannabis cultivators are allowed to implement measures that do not explicitly require professional certification to perform. In this case, CDFW or other applicable state or federal agencies should be contacted to obtain the appropriate permits to eradicate invasive species. The Cannabis General Order has been updated under this condition to reflect that the authority over invasive species eradication lies within CDFW or other agencies. END*

*Cannabis documents referenced:*

#### 025.005

Comment text:

"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." END

### Definitions (DE)

#### DE-07

**Summary comment: There is no definition for "Disturbed Land," even though this term is used often in the information sessions. Suggest that the Glossary to be revised to include this term.**

**END**

*Summary response: Please see the definition for "Land Disturbance." The definitions section in Attachment A has been updated. END*

*Cannabis documents referenced: Policy & General Order Att A, Section 1 Definitions 11; Policy Att B pg 6; Staff Report Appendix 3 pg 6.*

#### 025.013

Comment text: 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."  
END

#### DE-11

**Summary comment: "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."  
"END"**

*Summary response: The sentence being commented on needs to be taken in context with the rest of Requirement 45 within Section 2 of the Cannabis Policy's Attachment A. The preceding sentence states "Cannabis cultivators shall provide flows to downstream reaches during all times that the natural flow would have supported aquatic life." Inclusion of stream class does not change the requirement. END*

*Cannabis documents referenced: Attachment A, Section 2, Requirement 45*

#### 025.002

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: "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." END

#### Flow requirements, narrative (FR)

##### FR-06

**Summary comment: The forbearance period is unduly harsh, especially to the North Coast Region. Allow Regional Boards to set diversion periods. END**

*Summary response: While the North Coast region may receive more annual rainfall, it also contains many streams that support anadromous salmonid populations. The State Water Board had to develop a statewide Policy that could be put in effect by January 1, 2018. The tight time frame for policy development did not allow the State Water Board to develop regional forbearance periods. Instead, the State Water Board had to develop a forbearance period that would be protective statewide. A typical outdoor cannabis cultivation site requires the most water at the same time that the majority of the state's water bodies are in their lowest flow period (summer to fall). Accordingly, the most significant impacts from water diverted for cannabis cultivation occur during the dry season. Increased diversion during this period greatly affects the quantity and quality of water available, negatively impacts designated beneficial uses, and threatens the survival of endangered salmon, steelhead, and other aquatic life. In an effort to minimize the impacts that may occur from current and anticipated increased levels of cannabis cultivation, the Policy includes a forbearance period, during which water diversions for cannabis cultivation are prohibited.*

*To ensure protection of salmonid species from the adverse effects of diversions during low flow periods, diversions are not permitted during the late spring, summer, or fall months, when streamflow is especially important to anadromous salmonid populations. The wet season diversion period (diversion period) is therefore restricted to the period of higher flows, from as early as November 1 to March 31, when water is most available and impacts on fishery resources will be minimized. As the State Water Board begins to develop regional policies or makes updates to the interim Policy, forbearance periods may be adjusted as necessary to protect water quality and designated beneficial uses.*

*END*

*Cannabis documents referenced:*

##### 025.008

Comment text: "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."

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." END

##### FR-07

**Summary 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. END**

*Summary response: The requirement, as written, is consistent with other water right terms. Standard water right permit term 204 states the following: No water shall be diverted under this water right unless the flow in [SOURCE] is at or above [AMOUNT] cubic feet per second, as measured at [LOCATION]. In the event that said monitoring device is no longer available for streamflow measurements, right holder shall within 15 days submit a plan, satisfactory to the Deputy Director for Water Rights, to install an equivalent monitoring device as near as practicable to the location of the current monitoring device. END*

*Cannabis documents referenced:*

##### 025.012

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: 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." END

#### FR-08

**Summary comment:** "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."

**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."

END

*Summary response: The State Water Board is responsible for protecting water quality and beneficial uses. The forbearance period requirements are designed to, in part, balance the protection of aquatic habitat during the late fall as well as allow a reasonable starting date for water diversions. The Policy for Maintaining Instream Flows in Northern California Coastal Streams (North Coast Policy) (State Water Board, 2014) established a similar (but later) forbearance period in an area that overlaps with existing cannabis cultivation; the starting diversion date in the North Coast Policy is December 15 of each year. It was recognized in the Cannabis Policy that a December 15 starting date for diversions would be overly restrictive for cannabis cultivators, and thus an alternative method to allow diversions between November 1 and December 14 is outlined in the Cannabis Policy. The Policy has been updated to allow for the seven consecutive days to start on October 25 such that diversions could commence on November 1 if the previous seven days were above the November numeric instream flow requirement.*

*This is not a punitive requirement. Additionally, a voluntary component within a flow requirement cannot be enforced.*

END

*Cannabis documents referenced:*

#### 025.011

Comment text: "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."

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." END

#### WR-10

**Summary comment:** Daily monitoring is excessive and expensive. The policy should just require monthly records END

*Summary response: Cannabis cultivators are required to maintain records of daily diversion and use of water related to cannabis cultivation activities. Daily records ensure compliance with the daily flow requirements. There may be certain times in a month where diversions are not allowed. Monthly records would not be able to show whether or not a diverter was in compliance with such a requirement. Additionally, requiring daily diversion records forces cannabis cultivators to monitor their diversion works and compliance gages more regularly to make sure bypass flows are being met. Daily diversion records are required to be kept at the cultivation or diversion site and made available upon request. In addition to daily records, similar to requirements for other water users, water use reports shall be filed on an annual basis and shall document diversions by month made during the previous calendar year. END*

*Cannabis documents referenced:*

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

#### 025.010

Comment text: "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." END

#### WS-02

**Summary comment: If a cultivator does not have internet access, there should be an alternative option for checking their assigned watershed gage, either via phone or other method determined by the SWB. END**

*Summary response: As stated in the Policy, compliance gages will be assigned using existing gages. The flow requirements will be applied at these gages which are reported on one of two sites: (1) the United States Geological Survey – National Water Information System (NWIS); or (2) California Department of Water Resources (DWR) – California Data Exchange Center (CDEC). These websites are accessible by anyone, including public radio and community resource centers. Cannabis cultivators in ungaged watersheds may be required to install a gage if information indicates that use of the assigned gage does not adequately protect instream flows. The State Water Board will monitor where cannabis cultivation diversions are located to track areas where locally concentrated cannabis cultivation water diversions within a watershed may adversely affect instream flows.*

*Additionally, the State Water Board is developing an online mapping tool to assist cannabis cultivators with determining which compliance gage applies to them and whether they may divert water. It is anticipated that the online mapping tool will allow cannabis cultivators to enter their address or otherwise locate their point of diversion to identify their assigned watershed compliance gage. The compliance gage assignments may change as more information becomes available. To ensure cannabis cultivators are reporting in accordance with the appropriate gage, the cannabis cultivator is required to check the website for their compliance gage assignment at least daily and prior to diverting water to ensure water is available to divert at that gage (i.e., the real-time daily average flow is greater than the Numeric Flow Requirement at the assigned compliance gage).*

*Ultimately it is the responsibility of the cannabis cultivator to ensure compliance with the requirements of the Policy. This may require some cannabis cultivators to work with local cooperatives, community centers, or other industry groups to develop ways to properly obtain flow information during the diversion season. Such methods could include, but are not limited to, phone lines with diversion information or posted signs on common roads. This requirement is consistent with other water right requirements. As normalized, legal businesses, cannabis cultivators are encouraged to develop information infrastructure, such as internet access or local cooperatives, that is typical of other businesses.*

*END*

*Cannabis documents referenced:*

#### 025.009

Comment text: " 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. END

#### Road building, land disturbance, slope stability (RB)

##### RB-04

**Summary comment: "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. What if the roads are well functioning – still need a qualified professional?**

**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. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy and General Order have been revised to include a definition of access roads. Access roads are defined as a road, other than a completely paved road regularly maintained by a governmental entity, that provides access to one or more cannabis cultivation areas*

*Road construction and improvements, regardless of road ownership, shall be performed in accordance with the requirements of the Cannabis Policy and Cannabis General Order. Contractors hired to perform the road work must be licensed in accordance with the requirements of the California Contractors State License Board.*

*Maintenance on an existing road that is functioning well is not required to be conducted by a qualified professional. However, if a contractor is hired to conduct the road maintenance, the contractor must be licensed in accordance with the requirements of California Contractors State License Board.*

*END*

*Cannabis documents referenced: Att A: Sec 2, pg 23, Item 23.*

#### **025.001**

Comment text: "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." END

### **Water diversion, storage (WS)**

#### **WS-01**

**Summary comment: Requirement 75 seems to indicate that only fuel powered diversion pumps are allowed. Recommend updating to include solar, electric, gravity fed, and other pumps. END**

*Summary response: The language in the Policy will be updated to reflect that other types of pumps are allowed, and in some cases, even encouraged. END*

*Cannabis documents referenced:*

#### **025.003**

Comment text: "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."

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." END

#### **WS-07**

**Summary comment: The secondary containment for bladders is too large. Requiring 150% secondary containment will cause financial and environmental impacts. END**

*Summary response: Draft Policy Requirement 97 (Requirement 89 in updated Policy) has been updated to reflect a secondary containment of 110 percent for water bladder's capacity. The United States Environmental Protection Agency cites 110 percent as a generally accepted design criterion for secondary containment of tanks. Secondary containment is necessary to avoid erosion and other environmental impacts that may occur after a critical failure of a water bladder. END*

*Cannabis documents referenced:*

#### **025.006**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: "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. END

#### Water rights (WR)

##### WS-03

**Summary comment: The Policy should not prohibit onstream reservoirs on class III streams. END**

*Summary response: The Policy does not prohibit onstream storage reservoirs. However, onstream storage reservoirs that do not have a valid existing water right for irrigation, issued prior to October 17, 2017 will not be able to qualify for the Small Irrigation Use Registration Program.*

*Any cannabis cultivator who wants to use an onstream storage reservoir for cannabis cultivation who does not have an existing water right will have to go through the appropriate water right process. The Policy is unable to evaluate or mitigate, the potential environmental impacts of unpermitted onstream reservoirs. Such impacts will be identified and mitigated in the appropriate water right process. Additionally, new onstream reservoir construction includes potential impacts that would require analysis through the California Environmental Quality Act process, which is not covered under the Policy.*

*In addition, the Policy requires that all onstream reservoirs used for cannabis cultivation shall be operated in a manner that is consistent with the requirements of the Policy including, but not limited to, all bypass flow requirements and forbearance periods.  
END*

*Cannabis documents referenced:*

##### 025.004

Comment text:

"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." END

#### Winterization (WI)

##### WI-01

**Summary comment: "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." END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The definition of winter period has been updated to include the longer winter period established by some special county rules. The winter period now includes the following definition: Winter Period – calendar dates from November 15 to April 1, except as noted under special County Rules in California Code of Regulations, title 14, sections 925.1, 926.18, 927.1, and 965.5. A Regional Water Board Executive Officer may impose a more restrictive winter period based on special county rules to protect water quality.*

*The use of heavy equipment during the winter period greatly increases the risk of significant water quality degradation, both at the cultivation site and on the road to the cultivation site. Late in the winter period soils are likely to be saturated. The degree of saturation and water content in a soil mass may have a significant effect on the characteristics and behavior of the soil. This is particularly true for a fine-grained soil. A high water content may greatly reduce the shear strength and its bearing capacity. Saturated soil may be subject to excessive consolidation which would exacerbate drainage conditions on unpaved roads. In addition to the potential for immediate slope failures caused by transporting heavy equipment on saturated roads, the weight of the equipment may cause significant damage to the road by causing ruts and water ponding negating the work done to improve the road and maintain appropriate drainage characteristics. END*

*Cannabis documents referenced: Att A: Overview, pg 7, Item 29; Sec 2, pg 39, Item 129*

*Policy: Att B, pg 12*

*Staff rpt: pg 39, par 2; pg 71, par 4; App 3, pg 12, par 1*

#### **025.007**

Comment text: "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." END

### **McCaslin, Linda**

#### **Application for coverage (AP)**

##### **AP-12**

**Summary comment: Areas used for cultivation of food for personal consumption that are on the same property as the cannabis cultivation should not be considered part of the total cultivation area. END**

*Summary response: The Cannabis Policy and Cannabis General Order regulate cannabis cultivation activities and other activities associated with cannabis cultivation. Cultivation of food for personal consumption is not regulated under the Cannabis Policy or the Cannabis General Order and therefore are not considered to be part of the cannabis cultivation area. END*

*Cannabis documents referenced: Att A: Overview, pg 3, Item 4; Policy: Att B, pg 1, par 8; Staff rpt: App 3, pg 1, par 8*

#### **064.008**

Comment text: food for personal consumption being cultivated on the same property should NOT be considered part of the total cultivation area for which we have to pay fees. END

### **Cost of compliance (CS)**

#### **CS-02**

**Summary comment: Review the requirement to use qualified professionals to determine if necessary considering the cost and burden of hiring specialists. END**

*Summary response: Use of qualified professionals ensures that work is performed by qualified individuals. This is consistent with the California Business and Professions Code, which requires technical reports that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, to be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. See the definition of qualified professional in the Cannabis Policy and General Order Attachment A for a list of other professionals that may supervise technical report preparation.*

*The due date for certain technical reports has been removed from the Cannabis General Order to allow cannabis cultivators to submit the reports in accordance with their schedule for conducting cultivation and cultivation-related activities. Additionally, applicants that are currently enrolled in the North Coast Regional Water Board's Conditional Waiver of WDRs or the Central Valley Regional Water Board's General WDRs will not be required to enroll under the Cannabis General Order until July 2019. END*

*Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Att A: Sec 1, pg 9, Item 5; Att A: Sec 2, pg 20, Item 5; Att A: Sec 2, pg 21, Items 8-9; Att A: Sec 2, pg 22, Items 13-14; Att A: Sec 2, pg 23, Item 23; Att A: Sec 2, pg 24, Items 26-27, 29-31; Att A: Sec 2, pg 26, Item 41; Att A: Sec 2, pg 28, Item 48; Att A: Sec 2, pg 29, Item 56; Order: Att D, pg D-4 through D-5 & D-9 through D-10*



**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**064.005**

Comment text: the proposed regulatory paperwork should not require farmers to pay specialists to complete their papers END

**CS-14**

**Summary comment: The smallest of farmers, Type 1C cottage 25 plants outdoor, should be exempt from most of the proposed regulation. The costs are prohibitive and would eliminate cottage farmers. Also suggest all Type 1 outdoor, possibly also Type 2 up to 10,000 sq ft outdoor licensed farmers be exempt from the majority of this. END**

*Summary response: Type 1c Specialty Cottage sites can include up to 25 mature plants – significantly more than the 6 plants allowed under the personal use exemption. The potential water quality degradation from sites this size, especially those that are not required to comply with the best practicable treatment or control measures can be significant. Therefore, it is appropriate for such sites to be required to comply with the Cannabis Policy and General Order. The State Water Board's responsibility is protection of water quality. However, the State Water Board is aware of the costs of compliance imposed on cultivators and balances the requirements with the need to protect water quality. The cost of compliance is a function of the site specific conditions. Sites located a suitable distance from a water body on relatively level terrain are not required to implement a large number of BPTC measures. Sites located in close proximity to a water body or on a sloped property, are a higher threat to water quality and therefore are subject to additional BPTC measure requirements. Similarly, larger cultivation sites are an inherently higher threat to water quality and have additional requirements imposed upon them. For those facilities that cannot comply with the applicable BPTC measures, a schedule to achieve compliance can be obtained from the Regional Water Board. END*

*Cannabis documents referenced: Policy: pg 13, par 3, 5; Policy: pg 14, par 8; Policy: pg 15, par 8; Policy: pg 18, par 2-3; Order: pg 2, F7.a; Order: pg 3, F7.c; Order: pg 4, F10, 12; Order: pg 5, F13; Order: pg 12, F41.a; Order: pg 13, F41.d*

**064.006**

Comment text: We propose that the smallest of farmers, Type 1C cottage 25 plants outdoor be exempt from most of the proposed regulation. The costs are prohibitive and would eliminate cottage farmers, most of whom have very environmentally sound operations. The local cottage farmers have worked to come into compliance at great expense already. We also suggest all Type 1 outdoor, possibly also Type 2 up to 10,000 sq ft outdoor licensed farmers be exempt from the majority of this proposed new order. END

**Fees (FE)**

**FE-01**

**Summary comment: A separate tier for craft scale operations, similar to North Coast Regional Water Board permitting tier (2,000 - 5,000 SF), should be created for the statewide order, and be subject to a less stringent monitoring requirement and a reduced annual fee. END**

*Summary response: The Cannabis General Order Attachment B presents the monitoring and reporting program for cultivators enrolled under the order. Only Tier 1 and 2 cultivators are required to prepare and submit annual monitoring reports. Cultivators that disturb less than 2,000 square feet, are conditionally exempt and do not have to submit annual monitoring reports. Conditionally exempt cultivators also pay substantially lower fees; they are only required to pay an application fee rather than the annual fee that Tier 1 and 2 enrollees are required to pay. The commenter does not state why craft scale sites should have a separate tier. However, the Cannabis Policy and General Order do include a tiered approach to regulation. However, the potential water quality degradation from small sites, especially those that are not required to comply with the best practicable treatment or control measures can be significant. Therefore, it is appropriate for such sites to be required to comply with the Cannabis Policy and General Order. Furthermore, all commercial cultivation activities (commodities that are destined for the medical or recreational marketplace) are required to register or enroll under the Cannabis General Order. Compliance with the Cannabis General Order is required for a cultivator to obtain a CDFA cultivation license. For non-commercial activities, the Cannabis General Order provides personal use exemptions for medical or recreational cultivation activities. Sites that have a total disturbed area under 1,000 square feet and qualify for a personal use exemption are not required to register or enroll under the Cannabis General Order. Cultivators that disturb more than 2,000 square feet are deemed to be a higher threat to water quality and must enroll under the Cannabis General Order. The request of up to 5,000 square feet is significantly higher than the exemptions provided under the orders adopted by either the North Coast Regional Water Board (2,000 square feet), or the Central Valley Regional Water Board (1,000 square feet). A change was not made in response to the comment.*

*END*

*Cannabis documents referenced: Fee Regs*

**064.001**

Comment text: the proposed fees are extremely high and unrealistic for the smaller gardens END

**FE-02**

**Summary comment: Cannabis cultivated on the same property with food crops for personal consumption should not be considered part of the total cultivation area for which the farmer has to pay permit fees. END**

*Summary response: The Cannabis Policy and Cannabis General Order regulate cannabis cultivation activities and other activities associated with cannabis cultivation. Cultivation of food for personal consumption is not regulated under the Cannabis Policy or the Cannabis General Order and therefore are not considered to be part of the cannabis cultivation area for fee or site classification purposes.*

*END*

*Cannabis documents referenced: Order Findings 12, 13.*

**064.003**

Comment text: farmers should be allowed to grow their own vegetable gardens without fees END

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**Grandfather coverage (GR)**

**GR-01**

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.  
END*

*Cannabis documents referenced:*

**064.007**

Comment text: current enrollees in the North Coast Order should be allowed to continue operating under our Regional order for the 5 years duration that our regional Order was intended END

**Regulatory structure (RS)**

**RS-15**

**Summary comment: Make rules and regulations set by NC Regional Water Board order as standard statewide. Proposed General Order and Policy will replace the NC Regional Water Board AND CV Regional Water Board pilot programs and prohibit the development of site-specific watershed resource protection plans and additional financial burden on cannabis farmers. The proposed regulations should be closer to the North Coast Order, which considers the unique environment and was developed with local input. (19.004, 27.002,28.001, 57.001, 63.005, 64.004, 65.001) END**

*Summary response: Because the North Coast Regional Water Board adopted a waiver of WDRs, the authority to cover cultivators ends five years after adoption. By law, waivers of WDRs expire five years after adoption. It is more practical to cover the cultivation activities using a general order that does not expire and can be renewed.*

*The State Water Board worked with the Regional Water Boards and modeled the statewide Cannabis General Order on the North Coast Regional Water Board and Central Valley Regional Water Board orders. Because those orders were not consistent and the State Water Board is required to comply with Water Code section 13149 (passed by the Legislature in 2016 under Senate Bill 837), the Cannabis General Order is not entirely consistent with either of the orders. However, the Cannabis General Order does not disregard the previous compliance efforts. It includes a compliance schedule and allows for a site-specific compliance schedule for those sites with longer term implementation plans. Because the North Coast Regional Water Board approved the previous compliance plans, there is no reason to believe they would not renew the existing agreements.*

*Further, the Cannabis Policy and General Order have been revised in two ways to address the impacts to those enrollees under the existing Regional Water Board cannabis order. The first change is an extension of the transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019, allowing an extra year for cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the statewide Cannabis General Order adoption date will be allowed to continue operating with the originally approved Regional Water Board setbacks if the Executive Officer of the applicable Regional Water Board determines that the reduced setbacks will be protective of water quality.  
END*

*Cannabis documents referenced: CCP pg. 5, CCP Staff Rpt pg. 28,*

**064.004**

Comment text: the proposed regulations should be closer to the North Coast Order, which considers the unique environment and was developed with local input END

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**Setbacks (SB)**

**SB-01**

**Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END**

*Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END*

*Cannabis documents referenced:*

**064.002**

Comment text: the proposed increased setback distances from surface water and decreased slope (35% to 25%) are also unrealistic and unfair END

**Minassian, Kevin**

**Grandfather coverage (GR)**

**GR-01**

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region. END*

*Cannabis documents referenced:*

**028.002**

Comment text: At least anyone who has come into compliance so far should be grandfathered in after spending everything to be compliant to this point. END

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

#### Regulatory structure (RS)

##### RS-15

**Summary comment: Make rules and regulations set by NC Regional Water Board order as standard statewide. Proposed General Order and Policy will replace the NC Regional Water Board AND CV Regional Water Board pilot programs and prohibit the development of site-specific watershed resource protection plans and additional financial burden on cannabis farmers. The proposed regulations should be closer to the North Coast Order, which considers the unique environment and was developed with local input. (19.004, 27.002,28.001, 57.001, 63.005, 64.004, 65.001) END**

*Summary response: Because the North Coast Regional Water Board adopted a waiver of WDRs, the authority to cover cultivators ends five years after adoption. By law, waivers of WDRs expire five years after adoption. It is more practical to cover the cultivation activities using a general order that does not expire and can be renewed.*

*The State Water Board worked with the Regional Water Boards and modeled the statewide Cannabis General Order on the North Coast Regional Water Board and Central Valley Regional Water Board orders. Because those orders were not consistent and the State Water Board is required to comply with Water Code section 13149 (passed by the Legislature in 2016 under Senate Bill 837), the Cannabis General Order is not entirely consistent with either of the orders. However, the Cannabis General Order does not disregard the previous compliance efforts. It includes a compliance schedule and allows for a site-specific compliance schedule for those sites with longer term implementation plans. Because the North Coast Regional Water Board approved the previous compliance plans, there is no reason to believe they would not renew the existing agreements.*

*Further, the Cannabis Policy and General Order have been revised in two ways to address the impacts to those enrollees under the existing Regional Water Board cannabis order. The first change is an extension of the transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019, allowing an extra year for cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the statewide Cannabis General Order adoption date will be allowed to continue operating with the originally approved Regional Water Board setbacks if the Executive Officer of the applicable Regional Water Board determines that the reduced setbacks will be protective of water quality.*

*END*

*Cannabis documents referenced: CCP pg. 5, CCP Staff Rpt pg. 28,*

##### 028.001

*Comment text: I believe that the rules and regulations set by the NCRWQCB and Trinity County should be the standard that not only Trinity county but the whole state should follow. Our farms will be guided by one CEQA study conducted by the NCRWQCB, already completed, which was used to set regulations designed to bring our farms into a zero impact compliance operation, and another underway by Trinity County to determine the total number of farms to allow overall county wide END*

#### Setbacks (SB)

##### SB-06

**Summary comment: The huge setbacks required for the huge industrial operations throughout the state won't be needed with our farms which are tiny in comparison END**

*Summary response: Setback requirements are not based on the size of a cultivation site but rather on the proximity of cultivation site features to sensitive waters. Additionally, the Cannabis General Order requirements have been modified in two ways based on comments and now provide greater flexibility on setback measures.*

*The Cannabis Policy and General Order have been revised in two ways to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs*

*The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing and enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality.*

*END*

*Cannabis documents referenced:*

##### 028.003

*Comment text: The huge setbacks required for the huge industrial operations throughout the state won't be needed with our farms which are tiny in comparison END*

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**028.004**

Comment text: State wide regulations proposed will force out many of our small cottage farms because of set back requirements that should not apply to small farms with the best management practices we operate under. END

**Mines, Terrence**

**Grandfather coverage (GR)**

**GR-01**

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.

The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).

California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.  
END

Cannabis documents referenced:

**012.001**

Comment text: I have spent enormous amounts of money, time, effort and hard manual work into getting my property compliant for the regional water board order. Engineering has been done. I have been working at it non-stop for almost 3 years. I have another fix to a culvert. Plus one more culvert to put in, along with a minor drainage pool fix. That is what Fish and Wildlife, Stormwater, from the State water board, and my engineer agreed to when on my property last month. So I am begging you to Grandfather my property into the state water board resource plan, END

**National Oceanic and Atmospheric Administration**

**Application for coverage (AP)**

**AP-10**

**Summary comment: The low risk designation slope limit of 30 percent should be revised to be the same as the personal use exemption slope limit of 20 percent. END**

Summary response: Sites that qualify for a low risk designation are subject to more oversight compared to sites that qualify for personal use exemption and also have monitoring and reporting requirements. The more conservative personal use exemption slope limit (lower numerically) is appropriate due to the lower level of regulatory oversight. END

Cannabis documents referenced: Staff rpt: pg 38, par 2

**047.003**

Comment text: The Personal Use limit of less than 20 percent hill slope differs from the "low risk" designation of less than or equal to 30 percent. State Water Board staff should consider classifying these two groups of growers consistently, preferably by establishing a 20 percent maximum hillslope for both. END

**Flow requirements, numeric (FN)**

**FN-02**

**Summary comment: Concerns over the use of the Tessman Method in developing instream flow requirements. END**

Summary response: See Attachment 1 for FN-02 Summary Response. END

Cannabis documents referenced:

**047.001**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: NMFS is concerned with the water management elements proposed within the Cannabis Policy and General Order. We agree with the stated goal to "ensure that the individual and cumulative effects of water diversions and discharges associated with cannabis cultivation do not affect instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability." However, interim flow requirements outlined in Attachment A of the Cannabis Policy (see Numeric and Narrative Instream Flow Requirements) may fall short of meeting this goal and may result in excessive landscape disturbance because of the water storage required. END

#### Water diversion, storage (WS)

##### FN-02

**Summary comment: Concerns over the use of the Tessman Method in developing instream flow requirements. END**

*Summary response: See Attachment 1 for FN-02 Summary Response. END*

*Cannabis documents referenced:*

##### 047.002

Comment text: Based on our evaluation, the diversion management approach described in the Cannabis Policy would have minimal effects to streamflow in our "test stream" with an average diversion rate of 0.12% (maximum 1.18%; Table 1). However, the associated water storage was approximately 2 times higher than the water storage required by alternative percent of flow method, which provides the same level of irrigation supply. In a more impaired stream, there could be less water availability and significantly higher storage required. We are concerned about the potential effects of such large amounts of water storage on the landscape (e.g., storage is often created by clearing forest or increasing the extent of impervious areas), as well as future compliance with the policy by diverters faced with the significant cost of the added storage. We are also concerned with the potential cumulative effect of numerous diversions in a highly developed watershed with multiple users. If the current level of diversion within a watershed is high, existing stream flow may already be unnaturally low and impacting ESA-listed coho salmon, Chinook salmon and steelhead and their critical habitat (e.g., migration, spawning and rearing habitat).

Comparison of Diversion Methods

Average Percent Diverted Maximum Percent Diverted Storage Required (gallons)

Modified Tessman 0.12% 1.18% 232,000

Percent of Flow 0.07% 0.20% 110,400

Table 1. Comparison of diversion rates and required storage between the Modified Tessman and percent of flow methods assuming: (1) an irrigated area of 10,000 square feet, (2) a maximum diversion rate of 10 gallons per minute, (3) 0.007 percent of total surface flow required, and (4) forbearance period April 1 to October 31.

We would like to work with the State Water Board and the California Department of Fish and Wildlife on a method to estimate a conservative "natural" hydrograph at each POD. In addition, we would like to help establish a maximum rate of diversion or deviation from the "natural" hydrograph that would be protective of all life stages of listed species and habitat. Diversions should conserve the natural variability of all flows; maintain and adhere to the natural shape of the hydrograph; and require the minimum amount of storage needed in order to meet the diversion demand. For already-disturbed streams, the deviation from the natural hydrograph should dictate the timing and duration of the forbearance period, and the level of disturbance should dictate limits on cumulative diversions. Our evaluation reveals that a constant low rate of diversion from a "natural" hydrograph could be established at many sites throughout California and provide the needed water supply for the same irrigated area, while requiring much less storage than the proposed method and protecting the natural hydrograph.

FND

#### Winterization (WI)

##### WI-02

**Summary comment: Under required winterization measures, the Cannabis Policy should require cover crop planting on any exposed soil within the cultivation area to prevent winter erosion, similar to existing requirements for many vineyard operations. This requirement would not apply where ground has not been disturbed and native vegetation remains, such as when above ground "grow bags" are employed. END**

*Summary response: Cannabis cultivators are required to implement erosion and sediment control measures following land disturbance to minimize discharges of waste constituents. Erosion and sediment control measures must also be maintained and its effectiveness verified as part of winterization activities. Sowing a cover crop can be an effective soil stabilization measure that provides additional benefits. However, in accordance with California Water Code section 13360, the Cannabis Policy and the Cannabis General Order do not specify the manner in which the erosion and sediment requirements are to be met. Cannabis cultivators have a variety of options for complying with the winterization and erosion and sediment control requirements. END*

*Cannabis documents referenced: Att A: Sec 1, pg 15, Item 33; Sec 2, pg 21 – 22, Item 11; Sec 2, pg 39, Item 132; Sec 2, pg 40, Items 134 and 135.*

*Staff rpt: pg 39, par 2*

##### 047.004

Comment text: Under required winterization measures, the Cannabis Policy should require cover crop planting on any exposed soil within the cultivation area to prevent winter erosion, similar to existing requirements for many vineyard operations. This requirement would not apply where ground has not been disturbed and native vegetation remains, such as when above ground "grow bags" are employed. END

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**Native American Heritage Commission**

**Tribal, cultural (TC)**

**TC-15**

**Summary comment: See Comment 59.007 END**

*Summary response: Attachment A will be amended to identify the landowner, and not the cannabis cultivator, as the person responsible under Public Resources Code sections 5097.94 and 5097.98 and incorporate other changes recommended by the Native American Heritage Commission. END*

*Cannabis documents referenced:*

**078.004**

Comment text: Please see Attachment 1 for 78.004 comment text. END

**TC-17**

**Summary comment: See Comment 78.001 END**

*Summary response: The State Water Board thanks the Native American Heritage Commission for its comments and expertise. Attachment A will be amended to explicitly state that cannabis cultivation inconsistent with a conservation easement, open space easement, or greenway easement is prohibited, including such easements that are owned by qualifying California Native American tribes. In addition, attachment A will be amended to explicitly state that cannabis cultivation is not authorized on lands owned for the purposes of preserving or protecting Native American cultural resources of the kinds listed in Public Resources Code section 5097.9 and 5097.993 without the consent of the landowner. END*

*Cannabis documents referenced:*

**078.001**

Comment text: Please see Attachment 1 for 78.001 comment text. END

**TC-18**

**Summary comment: See Comment 78.002 END**

*Summary response: Attachment A will be amended to require a search of the Sacred Lands Inventory that is maintained by the Native American Heritage Commission prior to land disturbance for new or expanded cannabis cultivation activities. In the event of a positive result, cannabis cultivators will be required to consult with culturally affiliated California Native American tribes and submit proposed mitigation and conservation measures to the Deputy Director of the Division of Water Rights or the Executive Officer for the appropriate Regional Water Quality Control Board, as applicable. Culturally affiliated tribes will have the opportunity to submit comments and mitigation measure recommendations for consideration by the Deputy Director or Executive Officer. The State Water Board took this approach to create a process for cannabis cultivators to develop appropriate protective measures with California Native American tribes for the specific Native American cultural resources that may be affected by a given cannabis cultivation proposal. For more information on this change, see response to comment 59.001. END*

*Cannabis documents referenced:*

**078.002**

Comment text: Please see Attachment 1 for 78.002 comment text. END

**TC-19**

**Summary comment: See Comment 78.003 END**

*Summary response: Attachment A will be amended to require a search of the Sacred Lands Inventory that is maintained by the Native American Heritage Commission prior to land disturbance for new or expanded cannabis cultivation activities. For more information on this change, see responses to comments 59.001 and 78.002. END*

*Cannabis documents referenced:*

**078.003**

Comment text: Please see Attachment 1 for 78.003 comment text. END

**Nelson, Natalia**

**Water diversion, storage (WS)**

**WS-09**

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**Summary comment: Water Storage and Use:**

**#86 – Off-stream Storage Reservoirs:**

**Manhard Consulting feels it is crucial to mandate some protections against wildlife entrapment in off-stream storage reservoirs and ponds.**

**Potential solutions to wildlife entrapment include: (1) engineering slopes at 30% or less to allow larger animals to climb out; (2) fencing off reservoir using chicken wire fencing or similarly small-holed fencing material; (3) installing floating or secured water exit devices,4,5**

**(4) lining the reservoir perimeter with jute mesh to help animals climb out; and (5) frequently assessing the reservoir and checking for wildlife. Suggested Policy language could read: “Cannabis cultivators shall implement mechanisms to reduce wildlife entrapment in off- stream storage reservoirs. Storage reservoirs shall be fenced off using suitably small fencing to prohibit wildlife entry. Cannabis cultivators shall also implement wildlife escape mechanisms to ensure protection of endangered and threatened species, and, if possible, engineer off-stream storage reservoirs with maximum 30% slopes.”**

**END**

*Summary response: The protection of wildlife generally falls under the expertise authority of California Department of Fish and Wildlife (CDFW) and will be authorized and enforced through its Lake and Streambed Alternation Agreement program. Additionally, the Small Irrigation Use Registration (SIUR) water rights program will require cannabis cultivators to include any measures provided by CDFW.*

*These may include site-specific protections against wildlife entrapment in storage reservoirs and ponds covered under the SIUR water rights program. END*

*Cannabis documents referenced:*

**051.001**

Comment text: My main concern is that there aren't enough mandatory protections for wildlife, specifically in regards to lined reservoirs and ponds. Lined reservoirs and ponds can drown wildlife, and need specific policies need to be in place to prevent wildlife entrapment. Reducing slope angles, constructing wildlife escapement structures, and fencing off reservoir using small fencing material are possible solutions that could be required by the SWRCB. Please add language to the policy to protect California's wildlife, including our endangered and threatened species, from lined ponds and reservoirs. END

**Omsberg & Preston**

**Basin Plans, TMDLs (BP)**

**BP-01**

**Summary comment: The cost of compliance in north coast is significantly higher than in other regions due to property-wide and legacy requirement. Already north coast cultivators are struggling to become legal cultivators due to the regulatory costs. The property wide/ legacy requirement should apply to the whole state. Without the grace of time, few cultivators are going to be willing to try to go legal.**

**The state should contribute to the remediation of legacy issues (say 50 - 50 with the farmers), and allow a lot more time to mitigate them. END**

*Summary response: The legacy requirement is imposed upon cultivators in the North Coast Region because the North Coast Regional Water Board adopted basin plan amendments that require it. California Water Code Section 13263(a) requires waste discharge requirements to implement any relevant water quality control plan (basin plan). The North Coast Region is home to numerous threatened and endangered species that are sensitive to excessive sediment, temperature fluctuations, and reduction of suitable habitat. The migration, spawning, reproduction, and early development of cold water fish such as salmon and trout species, some of which are listed as threatened under the Federal Endangered Species Act, are impacted in the North Coast Region due to water quality impairments and other conditions.*

*The North Coast Region has adopted policies to support restoration efforts and to attain or maintain water quality objectives. The General Order is consistent with the Basin Plan for the North Coast Region, the Temperature Implementation Policy, and the Sediment TMDL Implementation Policy by requiring all dischargers that are landowners of a cultivation site in the North Coast Region to develop Site Management Plans that identify compliance with best practicable treatment or control measures property-wide, including discharges from legacy activities (e.g., former timber harvest, road building, mining, etc.) at the site.*

*The transition period has been extended to July 1, 2019. The extension provides additional time the commenter requested. There is currently no funding directly related to proportioning the costs of remediating legacy issues between the state and cannabis cultivators.*

**END**

*Cannabis documents referenced: Att A: Sec 5, pg 69, par 2.*

*Order: pg 9 – 10, F.30 – F.35; pg 17, C.1.*

**017.004**

Comment text: The cost of compliance in north coast is significantly higher than in other regions due to property-wide and legacy requirement. Already north coast cultivators are struggling to become legal cultivators due to the regulatory costs. The property wide/ legacy requirement should apply to the whole state. END

**Constituents of concern (CC)**



**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**CC-01**

**Summary comment: Should have a standard regarding no "hot spots" of fertilizer. END**

*Summary response: It is assumed that fertilizer "hot spots" in the comment refers to over-application of fertilizer. To minimize water quality degradation, cannabis cultivators shall apply fertilizer to cannabis cultivation areas consistent with crop need (e.g., agronomic rate). Nitrogen, a main component of fertilizer, shall also be applied consistent with crop need (i.e., agronomic rate).*

*Nitrogen compounds may exist in a number of chemical compounds (ammonia, nitrite, nitrate, and organic nitrogen). Nitrogen may exist in any of the compounds, although nitrate is the primary compound absorbed by plants. Nitrate is also the most mobile of the nitrogen compounds in the environment. The potential for degradation depends on fertilizer application method, loading rate, crop uptake, and processes in the vadose zone related to immobilization and/or denitrification. The Policy requires compliance with Requirements, which include practices that limit the amount of nitrogen applied and control runoff from the cannabis cultivation area. In addition, cannabis cultivation sites that are enrolled in Tier 2 under the General Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order) and that have combined activities to create a cultivation area on a parcel that is equal to or larger than one acre, must submit a Nitrogen Management Plan. The Nitrogen Management Plan shall calculate all the nitrogen applied to the cannabis cultivation area (dissolved in irrigation water, originating in soil amendments, and applied fertilizers) and describe procedures to limit excessive fertilizer application. Attachment D of the General Order provides guidance on the contents of a Nitrogen Management Plan. END*

*Cannabis documents referenced: Att A: Sec 2, pg 37, Items 114 and 115.*

*Order: pg 18, F. C.1.d. Att D: pg D-6. Policy pg 30, par 1.*

*Policy pg 31, par 5.*

**017.035**

Comment text: Should have a standard regarding no "hot spots" of fertilizer. END

**CC-02**

**Summary comment: "...Cannabis cultivators shall not apply nitrogen at a rate greater than 319 pounds/acre/year unless plant tissue analysis performed by a qualified individual demonstrates the need for additional nitrogen application. The analysis shall be performed by an agricultural laboratory certified by the State Water Board's Environmental Laboratory Accreditation Program."**

**Is this reasonable? Are there labs available capable of doing these analyses? Do other agriculture crops have to have lab tissue work done to supply higher amounts of nitrogen? If not why do we have a special rule for cannabis. END**

*Summary response: To minimize water quality degradation, cannabis cultivators shall apply nitrogen consistent with crop need (i.e., agronomic rate). Limiting nitrogen application to the agronomic rate is a common requirement in waste discharge requirements to protect water quality.*

*There are laboratories licensed by the state's environmental laboratory accreditation program that perform the analyses. Plant tissue sample analysis is an accepted practice to quantify the crop uptake of various constituents, including nitrogen and has been performed at a number of waste discharge to land sites.*

*END*

*Cannabis documents referenced: Att A: Sec 2, pg 37, Items 114 and 115.*

*Staff rpt: pg 32, par 5 – 6.*

**017.037**

Comment text: "...Cannabis cultivators shall not apply nitrogen at a rate greater than 319 pounds/acre/year unless plant tissue analysis performed by a qualified individual demonstrates the need for additional nitrogen application. The analysis shall be performed by an agricultural laboratory certified by the State Water Board's Environmental Laboratory Accreditation Program."

Is this reasonable? Are their labs available capable of doing these analyses? Do other agriculture crops have to have lab tissue work done to supply higher amounts of nitrogen? If not why do we have a special rule for cannabis.

END

**Cost of compliance (CS)**

**CS-02**

**Summary comment: Review the requirement to use qualified professionals to determine if necessary considering the cost and burden of hiring specialists. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: Use of qualified professionals ensures that work is performed by qualified individuals. This is consistent with the California Business and Professions Code, which requires technical reports that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, to be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. See the definition of qualified professional in the Cannabis Policy and General Order Attachment A for a list of other professionals that may supervise technical report preparation.*

*The due date for certain technical reports has been removed from the Cannabis General Order to allow cannabis cultivators to submit the reports in accordance with their schedule for conducting cultivation and cultivation-related activities. Additionally, applicants that are currently enrolled in the North Coast Regional Water Board's Conditional Waiver of WDRs or the Central Valley Regional Water Board's General WDRs will not be required to enroll under the Cannabis General Order until July 2019. END*

*Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Att A: Sec 1, pg 9, Item 5; Att A: Sec 2, pg 20, Item 5; Att A: Sec 2, pg 21, Items 8-9; Att A: Sec 2, pg 22, Items 13-14; Att A: Sec 2, pg 23, Item 23; Att A: Sec 2, pg 24, Items 26-27, 29-31; Att A: Sec 2, pg 26, Item 41; Att A: Sec 2, pg 28, Item 48; Att A: Sec 2, pg 29, Item 56; Order: Att D, pg D-4 through D-5 & D-9 through D-10*

#### 017.006

Comment text: Qualified professionals are required in numerous instances and those should be carefully reviewed to determine if necessary considering the cost. END

#### 017.028

Comment text: 26. "Ditches shall be designed and maintained as recommended by a qualified professional.... Inboard ditches and ditch relief culverts shall be designed to ensure discharges into natural stream channels or watercourses are prevented."  
What if functioning well?

27. "Cannabis cultivators shall use water bars and rolling dips as designed by a qualified professional."  
Requiring a consultant for very basic things may be unnecessary and costly. Should point to meeting a performance standard.

29. "Cannabis cultivators shall ensure that all road surface storm water drainage is discharged to a stable location away from wetlands and waterbodies as designed by a qualified professional."  
So all roads require hiring a consultant. This again is very costly

30. "Ditch relief culverts shall be designed by a qualified professional based on site-specific conditions."  
Seems unnecessary for DRCs. Should stick to instream work and business and professions code and provide a performance standard. END

#### CS-03

**Summary comment: The requirement to submit technical reports within 90 days after application submittal is unreasonable, especially considering the lack of qualified professionals. END**

*Summary response: The Cannabis General Order has been updated to remove the requirement from some of the technical reports to be submitted within 90 days of applying for coverage. However, the reports must be submitted and approved by the Regional Water Board Executive Officer before the cultivator can initiate activities at the site. END*

*Cannabis documents referenced: Att A: Sec 1, pg 15, Item 32; Att A: Sec 5, pg 69, par 1; Att A: Sec 5, pg 69; par 2; Att A: Sec 5, pg 70, par 2; Att A: Sec 5, pg 70, par 7; Order: pg 17, C.1.b; Order: pg 18, C.1.c; Order: pg 18, C.1.d*

#### 017.018

Comment text: "Within 90 days of application submittal, submit to the Executive Officer of the applicable Regional Water Board a time schedule and scope of work for use by the Regional Water Board in developing a compliance schedule."  
90 days is unreasonable. There is a lack of professionals and consultants in the North Coast region and more time will be needed to produce property wide scopes of work and compliance schedules  
END

#### CS-04

**Summary comment: Requiring that all roads that will be used for winter or wet weather hauling/traffic be surfaced is a huge cost. END**

*Summary response: Poorly constructed or maintained roads have proven to be significant sources of water quality degradation. While properly maintained unsurfaced temporary or seasonal roads may provide adequate water quality protection, vehicle travel over unsurfaced roads during winter or wet weather months will result in potholes, gullies, extensive rilling, mud, and other road surface problems. Consistent with the legislative mandate in Water Code section 13149, the requirement in the Cannabis Policy to surface roads that will be used for winter or wet weather, including during storm water monitoring, is included as a means to protect water quality and reduce impacts to surface waters. The costs of surfacing or, alternatively, non-operation of roads during winter or wet weather months, are appropriate and proportionate to the water quality harms avoided. END*

*Cannabis documents referenced: Att A: Sec 2, pg 23, Item 24; Staff rpt: pg 37, par 1-4*

#### 017.027

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: "All roads that will be used for winter or wet weather hauling/traffic shall be surfaced. Steeper road grades require higher quality rock (e.g., crushed angular versus river-run) to remain in place. The use of asphalt grindings is prohibited." This is a huge cost even if the road surface integrity is protected. Does the storm monitoring above count as winter use??  
END

#### CS-05

**Summary comment: The requirements in the Cannabis General Order to revegetate should be changed to require revegetation to be completed at a seasonally appropriate time. END**

*Summary response: The Cannabis General Order requires land disturbance activities to only occur between April 1 and November 15 each year. Thus, any revegetation work required by the Cannabis General Order must be completed by November 15 each year unless authorized in a compliance schedule issued by the Regional Water Board Executive Officer. Attachment A has been revised to change the revegetate within 30 days requirement to revegetate at a seasonally appropriate time. The change is consistent with the limitations on water availability for some cultivators. END*

*Cannabis documents referenced: Att A: Sec 2, pg 25, Item 33; Att A: Sec 2, pg 25, Item 36*

**017.029**

Comment text: Revegetation should be done at a seasonally appropriate time. END

#### CS-06

**Summary comment: The requirement to use rock fords is an over-reach and should be changed to require site-specific approval by the California Department of Fish and Wildlife and the Regional Water Quality Control Board. END**

*Summary response: The Cannabis Policy and General Order do not require the use of rock fords. Instead, the documents limit the use of rock fords to situations where their use is appropriate. Cannabis cultivators shall only use rock fords for temporary seasonal crossings on small water bodies where aquatic life passage is not required during the time period of use. Rock fords shall be oriented perpendicular to the flow of the watercourse and designed to maintain the range of surface flows that occur in the watercourse. When constructed, rock shall be sized to withstand the range of flow events that occur at the crossing and rock shall be maintained at the rock ford to completely cover the channel bed and bank surfaces to minimize soil compaction, rutting, and erosion. Rock must extend on either side of the ford up to the break in slope. The use of rock fords as watercourse crossings for all-weather road use is prohibited.*

*The requirements in the Cannabis Policy regarding rocks includes as a means to protect water quality and reduce impacts to surface waters. The Road Handbook includes similar requirements. END*

*Cannabis documents referenced: Att A: Sec 2, pg 22, Item 14; Att A: Sec 2, pg 28, Item 53*

**017.031**

Comment text: Rocked fords can be very effective for seeps. Where there is little flow and full flow capture would require disturbance. This is an over reach. How about site-specific approval required by CDFW and RWB? END

#### CS-07

**Summary comment: The definition of winter period should be left up to each Regional Water Quality Control Board. END**

*Summary response: The Cannabis Policy and General Order have been modified to clarify that the winter period may be earlier if needed to prevent waste discharges that result in water quality degradation. The earlier dates are imposed due to a county ordinance or a basin plan requirement. END*

*Cannabis documents referenced: Att A: Overview, pg 7, Item 29; Att A: Sec 2, pg 39, Item 127; Policy: Att B, pg 12, par 1; Staff rpt: App 3, pg 12, par 1*

**017.038**

Comment text: Winter period is November 15 to April 1. Typically on the north coast October 15 – May 15 is considered winter period for waste discharges. How is this protective? Again a good example of why these specifics should be left up to each regional board. END

#### CS-08

**Summary comment: The requirement to cover and berm all loose stockpiled construction materials that are not actively being used seems excessive. Consider if a vegetative cover can be used instead. END**

*Summary response: The requirement in the Cannabis Policy to cover and berm all loose stockpiled construction materials that are being actively used is included as a means to protect water quality and reduce impacts to surface waters. The use of a vegetative cover implies long term storage of the materials. That situation may result in significant erosion and water quality degradation. However, the erosion prevention measure will not be required in every situation. Therefore Attachment A has been revised to make the requirement applicable when needed. END*

*Cannabis documents referenced: Att A: Sec 2, pg 21, Item 9; Att A: Sec 2, pg 39, Item 133; Staff rpt: pg 38, par 7*

**017.041**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: "Cannabis cultivators shall cover and berm all loose stockpiled construction materials (e.g., soil, spoils, aggregate, etc.) that are not actively (scheduled for use within 48 hours) being used."

This seems excessive. How about if have the potential to erode and transport? Can a vegetative cover be used? END

#### CS-16

**Summary comment: Some of the terms in Attachment A may be unnecessarily overly restrictive and pose challenges for implementation or impose increased costs without environmental benefit.**

**The proposed requirements would cause myself and many other farmers throughout the county massive economic hardship at a time when our region can ill afford it  
END**

*Summary response: The cost of compliance is an unavoidable part of implementing any water quality control policy that will both protect and enhance the existing environment and incorporate oversight for those protections. Direct cost analysis of the Cannabis Policy has been developed and can be found under Item 6 at the State Water Board's October 17, 2017 meeting agenda, which is available online at: [https://www.waterboards.ca.gov/board\\_info/agendas/2017/oct/101717\\_agenda.pdf](https://www.waterboards.ca.gov/board_info/agendas/2017/oct/101717_agenda.pdf). There are two main costs: costs associated with regulatory oversight, and cost associated with cultivation site measures. Regulatory oversight costs are required to fund the state programs that both monitor and enforce the Cannabis Policy requirements. Regulatory costs are set by what funding is reasonably needed to perform those monitoring and enforcement tasks.*

*The State Water Board developed the Policy and associated requirements based on the practicalities of cannabis cultivation operations and the reality of water quality- and aquatic habitat-related impacts from cannabis cultivation in California. Compared to other irrigated agriculture, there are tangible differences in how and where cannabis is grown - detailed in the Staff Report - that militate in favor of cannabis-specific requirements that in many cases differ from requirements applicable to other irrigated agriculture. To give one example, cannabis cultivation operations tend to be concentrated high in the watershed, near headwaters or small tributaries that are more sensitive to waste discharges and water diversions than larger streams that flow at lower elevations. In contrast, much of California's irrigated agriculture occurs on flat and/or open terrain where any nearby waterbodies are less sensitive to changes in diversion patterns or waste discharges. Additionally, land disturbance activities associated with irrigated agriculture more frequently occur far enough away from nearby waterbodies that express riparian setback requirements are unnecessary.*

*Additionally, changes have been made to the Cannabis General Order that will potentially lower the costs of compliance for cannabis cultivators enrolled in an existing waste discharge requirement program. The first change is an extension of the transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019, allowing an extra year for cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the Cannabis General Order adoption date will be allowed to continue operating with the originally approved Regional Water Board setback if the Executive Officer of the applicable Regional Water Board determines that the setbacks will be protective of water quality.  
END*

*Cannabis documents referenced: Add reference to Direct Cost Analysis when we know where it will be.*

#### 017.007

Comment text: Some of the terms in Attachment A may be unnecessarily overly restrictive and pose challenges for implementation or impose increased costs without environmental benefit END

#### 017.008

Comment text: There are technology requirements that may result in increased costs and include reasonable access issues, perhaps without environmental benefit (e.g. monthly turbidity and pH monitoring, daily stream gage monitoring and diversion reporting). END

#### 017.011

Comment text: The existing cultivators that are pursuing legal cultivation will be squeezed out after significant investment over the past two years. END

#### Flow requirements, narrative (FR)

##### FR-02

**Summary comment: The forbearance period is too restrictive. The forbearance period doesn't take into consideration regional differences. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The State Water Board had to develop a statewide Policy that could be put in effect by January 1, 2018. The tight time frame for policy development did not allow the State Water Board to develop regional forbearance periods. Instead, the State Water Board had to develop a forbearance period that would be protective statewide. A typical outdoor cannabis cultivation site requires the most water at the same time that the majority of the state's water bodies are in their lowest flow period (summer to fall). Accordingly, the most significant impacts from water diverted for cannabis cultivation occur during the dry season. Increased diversion during this period greatly affects the quantity and quality of water available, negatively impacts designated beneficial uses, and threatens the survival of endangered salmon, steelhead, and other aquatic life. In an effort to minimize the impacts that may occur from current and anticipated increased levels of cannabis cultivation, the Policy includes a forbearance period, during which water diversions for cannabis cultivation are prohibited.*

*To ensure protection of salmonid species from the adverse effects of diversions during low flow periods, diversions are not permitted during the late spring, summer, or fall months, when streamflow is especially important to anadromous salmonid populations. The wet season diversion period (diversion period) is therefore restricted to the period of higher flows, from as early as November 1 to March 31, when water is most available and impacts on fishery resources will be minimized. As the State Water Board begins to develop regional policies or makes updates to the interim Policy, forbearance periods may be adjusted as necessary to protect water quality and designated beneficial uses.*

*The Policy has been amended to address the possibility of disruption for existing cannabis cultivators. Cannabis cultivators enrolled under the cannabis orders adopted by the North Coast Regional Water Board and Central Valley Regional Water Board are not required to enroll in the statewide cannabis General Order until July 1, 2019. This grace period allows existing enrollees time to install the necessary storage to comply with the Policy's forbearance period.*

*END*

*Cannabis documents referenced:*

**017.042**

Comment text: Adds 6 weeks in spring and 2 weeks in fall to the forbearance period. Again this seems to be written more with Southern California in mind with their lower rainfalls. Allow each regional board to set up a forbearance period appropriate for the region. END

#### **FR-04**

**Summary comment: In addition to Narrative Flow Requirement 4, at all times the cannabis cultivators shall bypass a minimum of 50 percent of the surface water flow past their point of diversion, as estimated based on visually observing surface water flow at least daily."**

**Could be long hike to spring box daily – should specify or other reasonable means of determining bypass and diversion rates.**

**END**

*Summary response: Given the other requirements of the Policy including, but not limited to, the requirement for daily flow records, it is reasonable for the cannabis cultivator to be required to access his/her point of diversion on a daily basis while the cannabis cultivator is diverting. Ultimately, it is the responsibility of the diverter to ensure he/she is in compliance with all aspects of his/her water right. END*

*Cannabis documents referenced:*

**017.044**

Comment text: In addition to Narrative Flow Requirement 4, at all times the cannabis cultivators shall bypass a minimum of 50 percent of the surface water flow past their point of diversion, as estimated based on visually observing surface water flow at least daily."

Could be long hike to spring box daily – should specify or other reasonable means of determining bypass and diversion rates. END

#### **Flow requirements, numeric (FN)**

##### **WS-02**

**Summary comment: If a cultivator does not have internet access, there should be an alternative option for checking their assigned watershed gage, either via phone or other method determined by the SWB. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: As stated in the Policy, compliance gages will be assigned using existing gages. The flow requirements will be applied at these gages which are reported on one of two sites: (1) the United States Geological Survey – National Water Information System (NWIS); or (2) California Department of Water Resources (DWR) – California Data Exchange Center (CDEC). These websites are accessible by anyone, including public radio and community resource centers. Cannabis cultivators in ungaged watersheds may be required to install a gage if information indicates that use of the assigned gage does not adequately protect instream flows. The State Water Board will monitor where cannabis cultivation diversions are located to track areas where locally concentrated cannabis cultivation water diversions within a watershed may adversely affect instream flows.*

*Additionally, the State Water Board is developing an online mapping tool to assist cannabis cultivators with determining which compliance gage applies to them and whether they may divert water. It is anticipated that the online mapping tool will allow cannabis cultivators to enter their address or otherwise locate their point of diversion to identify their assigned watershed compliance gage. The compliance gage assignments may change as more information becomes available. To ensure cannabis cultivators are reporting in accordance with the appropriate gage, the cannabis cultivator is required to check the website for their compliance gage assignment at least daily and prior to diverting water to ensure water is available to divert at that gage (i.e., the real-time daily average flow is greater than the Numeric Flow Requirement at the assigned compliance gage).*

*Ultimately it is the responsibility of the cannabis cultivator to ensure compliance with the requirements of the Policy. This may require some cannabis cultivators to work with local cooperatives, community centers, or other industry groups to develop ways to properly obtain flow information during the diversion season. Such methods could include, but are not limited to, phone lines with diversion information or posted signs on common roads. This requirement is consistent with other water right requirements. As normalized, legal businesses, cannabis cultivators are encouraged to develop information infrastructure, such as internet access or local cooperatives, that is typical of other businesses.*

*END*

*Cannabis documents referenced:*

**017.009**

Comment text: Decent internet is a limiting factor in the north coast there needs to be reasonable accommodations. END

**017.043**

Comment text: Cannabis cultivators shall verify and document compliance with the applicable Numeric Flow Requirement on a daily basis for each day of surface water diversion." Reasonable access needs to be afforded to cultivators. The north coast is limited on internet and cellular access. END

### Monitoring, reporting (MR)

**MR-01**

**Summary comment: The Cannabis General Order should include a trigger for when storm monitoring is required, such as after 3 inches of rain in 24 hours, as there are many properties in the North Coast region that are rural and not easily accessible in the winter. END**

*Summary response: The storm water monitoring section of the monitoring and reporting program does include a trigger. It is once per calendar month when precipitation exceeds 0.25 in/day or when storm water runoff from the site is generated. That monitoring is required every month until the facility has completed the winterization procedures. If there are no cannabis-related land disturbance activities at the site, and if winterization measures are complete, storm water monitoring is not required.*

*It is anticipated that many cannabis cultivation sites will be vacated in the winter months and some, where homesteads have been constructed, will be occupied. The Cannabis General Order does not require absentee cultivators to return to their facility to collect storm water samples. If the absentee return to the site (e.g., to divert water, check on the water storage status, or other reason that is cannabis related), then appropriate storm water sampling should be performed. A change was not made in response to the comment. END*

*Cannabis documents referenced: Order: Att B, pg B-4, footnote 3*

**017.025**

Comment text: We have many rain storms here on the north coast. Many of these properties are rural and not easily accessible in the winter. Monitoring during after every storm is not possible. Having a trigger for storm monitoring of 3 inches of rain in 24 hours is much more feasible. Again this would possibly be best left up to each regional board so it could be tailored to each region. END

**017.040**

Comment text: "Culverts shall be inspected prior to the onset of fall and winter precipitation and following precipitation events to determine if maintenance or cleaning is required." Every precipitation event (see above comments under Land Development #15)? [Commenter reference to "comments under Land Development #15" is Comment ID 17.25. See response MR-01.] END

**MR-02**

**Summary comment: How will compliance with certain BPTC measures be assessed if monitoring that is specific to assessing that compliance is not required? END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: Cannabis cultivators are required to self-certify in their application for coverage under the Cannabis General Order that they comply or will comply with the BPTC measures in Attachment A every year by November 15. If it is discovered during a complaint or compliance inspection that the cannabis cultivator is not complying with all applicable requirements, coverage under the Cannabis General Order can be revoked. END*

*Cannabis documents referenced: Att A: Sec 1, pg 15, Item 31; Staff rpt: pg 71, par 4; Order: pg 14, F42.a*

**017.036**

Comment text: 113. "Cannabis cultivators shall not apply agricultural chemicals within 48 hours of a predicted rainfall event of 0.25 inches or greater."

What is tracking this?

114. "To minimize infiltration and water quality degradation, Cannabis cultivators shall only irrigate and apply fertilizer to cannabis cultivation areas consistent with crop need (i.e., agronomic rate)."

Again, what is tracking this?

END

### Outreach, public notification (OP)

**OP-01**

**Summary comment: Outreach was insufficient. END**

*Summary response: The State Water Board held or participated in the following meetings during the development of the Cannabis Policy:*

- Eight public outreach meetings to solicit comments on Policy development - August 31 - October 4, 2016 (throughout CA)
- Calaveras County Water District Meeting – September 28, 2016 (Andreas)
- Siskiyou County Board of Supervisors Meeting – October 4, 2016 (Yreka)
- North Coast Regional Board Meeting – October 20, 2016 (Santa Rosa)
- North Coast Watersheds Science and Management Exchange Program – February 2, 2017 (Douglas City)
- California Water Action Plan Meeting – February 8, 2017 (Briceland)
- American Fisheries Society Conference – April 7, 2017 (Eureka)
- Mendocino County Permit Meetings – April 19, 2017 (Laytonville and Willits)
- Meetings with Association of California Water Agencies, Northern CA Water Association, Farm Bureau, wine stakeholders, water rights stakeholders – May 25, 2017
- California State Association of Counties, Humboldt County Regional Meeting – June 29, 2017 (Eureka)
- California Department of Food and Agriculture Draft Environmental Impact Report Public Meetings – July 11-20, 2017 (throughout CA)
- CA Growers Association Meetings – July 29, 2016; January 18, 2017; and July 10, 2017 (Sacramento)
- Two Public Information Meetings for Draft Policy and Draft General Order – July 20, 2017 (Eureka) and July 27, 2017 (Sacramento)
- Tribal Consultation with Karuk Tribe – August 1, 2017 (Orleans)
- State Water Board Workshop on Draft Policy and General Order – August 2, 2017 (Sacramento)
- Santa Cruz County State Cannabis Licensing Workshop – September 14, 2017 (Santa Cruz)
- Tribal Consultation with Blue Lake Rancheria, Yurok Tribe, Karuk Tribe, Bear River Band of the Rohnerville Rancheria, Hoopa Valley Tribe, and Wiyot Tribe – September 26, 2017 (Blue Lake)

*Meetings held by the State Water Board were noticed in local newspapers some of which include the Press Democrat, Ukiah Daily Journal, Sacramento Bee, Fresno Bee, LA Times, San Francisco Chronicle, Ventura County Star, and Eureka Times Standard. Notices were also sent electronically to anyone who had signed up for the State Water Board's "Cannabis Cultivators" email subscription list as well as the cannabis email lists for the North Coast Regional Water Board and the Central Valley Regional Water Board. State Water Board staff also participated in radio broadcasts and mailed the Notice of Public Hearing to all enrollees and applicants for coverage under the North Coast Regional Water Board and Central Valley Regional Water Board cannabis general orders..*

*At meetings, State Water Board staff informed the public of the State Water Board's efforts related to cannabis cultivation. Staff consistently solicited information and input from any interested parties, especially those that were involved in cannabis cultivation.*

*END*

*Cannabis documents referenced:*

**017.012**

Comment text: There has been little outreach by the state board nor notification of cultivators regarding the proposed regulations. Cultivators thought they were signing up for one thing and now the draft presents a very different structure that doesn't fit with many of these cultivators and the investment in their business may be for not. END

### Regulatory structure (RS)

**RS-01**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: SWRCB General Order should allow the Regional Boards more flexibility and deferment to implement locally appropriate solutions. Enrollees under a Regional Board order shall be allowed to continue until it expires. Allow each region to develop its own program or opt to use the new State Order. North Coast Region may use their existing Order and cannabis farmers can continue on their compliance track, or farmers that have enrolled in the Regional Board order shall be allowed to continue to work under existing conditions and thus be grandfathered in. Does the General Order allow Regional Boards to develop site-specific orders for those that do not fit into SWRCB General order?(15.004) (74.005) (77.002) (17.014) (18.004), (38.004). END**

*Summary response: The Cannabis General Order provides a transition period until July 1, 2019 for enrollees under the existing Regional Water Board orders. They may transition sooner if they prefer. Those cultivators that have initiated remedial activities at their facilities will not be penalized because the Cannabis General Order requires similar activities.*

*The Cannabis General Order does allow Regional Water Boards the alternative of preparing a region specific general order or site specific WDRs. However, California Water Code Sections 13146 and 13263 require that WDRs implement any applicable water quality control plan or policy. Any general order or site-specific order adopted by a Regional Water Board must be consistent with the requirements of the Cannabis Policy. Therefore, any region specific general order would be very similar to the Cannabis General Order. END*

*Cannabis documents referenced: CCP Staff Rpt pg. 28, GO 6b, pg. 2*

#### 017.001

Comment text: This new order was written to be a one size fits all for the whole state, as a result it does not fit our region, or take into account our rural areas, lack of internet coverage, access in the winter time etc. END

#### 017.014

Comment text: Does the draft offer the Regional Water Board adequate discretion to develop site-specific WDRs? Could they provide a general WDR for sites that don't fit into the State-Board Order? END

### RS-02

**Summary comment: The General Order does not fit each Region's unique situations and challenges. SWRCB shall provide direction to each RB and shall issue their GO specific to their needs. (17.001, 17.003) END**

*Summary response: The Cannabis Policy and General Order are not entirely consistent with either of the orders adopted by the North Coast or Central Valley Regional Water Boards because the two orders were not consistent with each other. That is not an unexpected occurrence. However, the State Water Board began preparation of the Cannabis General Order using both of the documents as a starting point. While the Cannabis General Order is not identical to the approach taken in the existing Regional Water Board orders, staff disagree that it conflicts with the orders. All the orders are designed to protect water quality, there is more than one way to accomplish that goal.*

*California Water Code Sections 13146 and 13263 require that WDRs implement any applicable water quality control plan or policy. Any general order adopted by a Regional Water Board must be consistent with the requirements of the Cannabis Policy. Therefore, any region specific general order would be very similar to the Cannabis General Order.*

*END*

*Cannabis documents referenced: CCP Staff Rpt pg. 28, and GO 6(b) pg. 2*

#### 017.003

Comment text: I would like to see the State Order re-written with more general protections and a direction for each regional board to write their own more specific order that fits each individual region. END

### RS-03

**Summary comment: Lack of flexibility will not allow many north coast growers to enroll in the SWRCB General Order. (17.010) END**

*Summary response: The Cannabis General Order provides sufficient flexibility. A transition period is provided for enrollees under the existing Regional Water Board orders, if the enrollee cannot comply within the transition period, they can request a compliance schedule from the Regional Water Board. New enrollees are allowed until the winter period begins (typically November 15) to comply with the requirements, if they cannot comply, they can also obtain a compliance schedule from the Regional Water Board. For those cultivators that propose activities that are not consistent with the conditions of enrollment (e.g., slope greater than 50 percent), they can apply for site specific WDRs from the Regional Water Board. END*

*Cannabis documents referenced: CCP Staff Rpt pg. 28, and GO 6(b) pg. 2*

#### 017.010

Comment text: The lack of flexibility to achieve the protections beyond the means identified in Attachment A will result in a significant portion of north coast growers not qualifying for coverage. END

### Resource, funding (RF)

#### RF-01



## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: Is there adequate staffing at the Regional Water Board to develop other WDRs for coverage or will the lack of coverage preclude cultivators from gaining the necessary regulatory coverage to qualify for cultivation licensing? END**

Summary response: Regional Water Boards have been provided with additional staff to address the workload associated with cannabis cultivation. The staff have been distributed among the Regional Water Boards, State Water Board (Divisions of Water Rights and Water Quality), and the State Water Board Office of Enforcement based on the anticipated distribution of cannabis cultivation activities. Because the cannabis program will generate significant workload, the boards, divisions, and offices will have to prioritize staff resources to address the workload, perform field inspections, enforce the Cannabis Policy and General Order, as well as coordinate with law enforcement and other departments (CDFW, CDFA, etc.) as needed. However, it should be noted that the Regional Water Boards may find that some cannabis cultivation sites cannot be configured in a way to adequately protect water quality and they may not issue site specific WDRs for some facilities that do not comply with the requirements of the Cannabis Policy and General Order. END

Cannabis documents referenced: --

**017.015**

Comment text: Is there adequate staffing at the Regional Water Board to develop other WDRs for coverage or will the lack of coverage preclude cultivators from gaining the necessary regulatory coverage to qualify for cultivation licensing? END

### Road building, land disturbance, slope stability (RB)

#### RB-01

**Summary comment: "After July 1, 2017, and prior to initiating any land disturbance, Tier 2 cannabis cultivators located on slopes greater than 30% and less than 50% must submit a Site Erosion and Sediment Control Plan to the Regional Water Board Executive Officer for any cannabis-related land development or alteration. The Site Erosion and Sediment Control Plan shall be approved by the applicable Regional Water Board Executive Director prior to the cannabis cultivator initiating any land disturbance."**

**What about existing areas on slopes greater than 30%? END**

Summary response: The Cannabis Policy and General Order have been revised to remove the July 1, 2017 date. The date was removed because even though a cannabis cultivation facility may preexist the adoption of the policy and general order, cultivation activities necessitate annual soil disturbance. Because there is no assurance that previous erosion control methods were or are effective, it is logical to require all cannabis cultivators with disturbed areas on slopes greater than 30 percent to prepare the technical report. Those cultivators that are enrolled under the North Coast Regional or Central Valley Regional Water Board are not required to comply with the requirement until they transition to the Cannabis Policy and General Order (no later than 1 July 2019). END

Cannabis documents referenced: Att A: Overview, pg 4, Item 11; Sec 1, pg 14 – 15, Item 30; Sec 1, pg 15, Item 32; Sec 2, pg 19, Item 2.

Policy: Att B, pg 6, par 2.

Staff Rpt: App 3, pg 6, par 2.

**017.017**

Comment text: "After July 1, 2017, and prior to initiating any land disturbance, Tier 2 cannabis cultivators located on slopes greater than 30% and less than 50% must submit a Site Erosion and Sediment Control Plan to the Regional Water Board Executive Officer for any cannabis-related land development or alteration. The Site Erosion and Sediment Control Plan shall be approved by the applicable Regional Water Board Executive Director prior to the cannabis cultivator initiating any land disturbance."

What about existing areas on slopes greater than 30%? END

#### RB-02

**Summary comment: If the slope is stable it should be allowed to qualify for coverage. While achieving 2:1 slope is a minimum goal, the site conditions may not allow that and there needs to be site specific options for coverage. This is a good place to call for approval by a qualified professional. END**

Summary response: Cannabis cultivation areas with slopes greater than 50 percent are not eligible for coverage under the Cannabis General Order. Slopes greater than 50 percent present significant water quality problems related to erosion. Slopes over 50 percent require structures or special techniques for stabilization. In very steeply sloping areas (50 percent or more), vegetation is best maintained to preserve native habitat and avoid erosion. The Policy prohibits new disturbance associated with cannabis cultivation activities on slopes greater than 50 percent. Cannabis cultivators operating cultivation activities on a slope greater than 50 percent are required to stabilize the area and cease cultivation activities unless they can obtain site-specific WDRs from the appropriate Regional Water Board. A licensed professional will be required to provide an evaluation and design to effectively stabilize the slope. Please contact the applicable Regional Water Board regarding obtaining a site-specific WDR for the cannabis cultivation site. END

Cannabis documents referenced: Att A: Sec 1, pg 14, Item 27.

**017.022**

Comment text: If the slope is stable it should be allowed to qualify for coverage. While achieving 2:1 slope is a minimum goal, the site conditions may not allow and there needs to be site specific options for coverage. This is a good place to call for approval by a qualified professional . END

#### RB-03

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**Summary comment: If retaining walls or other structures are required to provide slope stability, they shall be designed by a qualified professional."**

**Required by whom? How big? What is the trigger?" END**

Summary response: Construction of retaining walls generally requires a building permit. Building departments require structure design to be performed by a qualified professional. Conditions such as a single wall higher than four feet (including foundation footing), a terraced retaining wall, a surcharged area above the retaining wall (e.g., vehicle parking area), or a sloped surface above the retaining wall all trigger the need for a professional civil engineer to perform the design. Some local agencies may have more conservative criteria regarding design requirements so the cannabis cultivator should check before initiating construction. Failure of a retaining wall can have catastrophic consequences including property damage, severe water quality degradation, and fatalities for people nearby. END

Cannabis documents referenced: Att A: Sec 2, pg 22, Item 14.

Staff rpt: pg 38, par 4.

**017.024**

Comment text: "If retaining walls or other structures are required to provide slope stability, they shall be designed by a qualified professional."  
Required by whom? How big? What is the trigger? END

**RB-04**

**Summary comment: "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. What if the roads are well functioning – still need a qualified professional?**

**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. END**

Summary response: The Cannabis Policy and General Order have been revised to include a definition of access roads. Access roads are defined as a road, other than a completely paved road regularly maintained by a governmental entity, that provides access to one or more cannabis cultivation areas

Road construction and improvements, regardless of road ownership, shall be performed in accordance with the requirements of the Cannabis Policy and Cannabis General Order. Contractors hired to perform the road work must be licensed in accordance with the requirements of the California Contractors State License Board.

Maintenance on an existing road that is functioning well is not required to be conducted by a qualified professional. However, if a contractor is hired to conduct the road maintenance, the contractor must be licensed in accordance with the requirements of California Contractors State License Board.

END

Cannabis documents referenced: Att A: Sec 2, pg 23, Item 23.

**017.026**

Comment text: "Cannabis cultivators shall have a qualified professional design the optimal road alignment, surfacing, drainage, maintenance requirements, and spoils handling procedures."  
What if the roads are well functioning well – still need a qualified professional? END

**RB-05**

**Summary comment: "Cannabis cultivators shall apply linear sediment controls (e.g., silt fences, wattles, etc.) along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow length at the frequency specified below."**

**Clarify what is exposed soils. END**

Summary response: Exposed slopes and exposed soils are areas resulting from land disturbance. Disturbed lands are areas where natural conditions have been modified in a way that may result in an increase in turbidity in water discharged from the site. Disturbed land includes areas where natural plant growth has been removed whether by physical, animal, or chemical means, or natural grade has been modified for any purpose. END

Cannabis documents referenced: Att A: Overview, pg 4, Item 11; Sec 2, pg 39, Item 130.

**017.039**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: "Cannabis cultivators shall apply linear sediment controls (e.g., silt fences, wattles, etc.) along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow length[2] at the frequency specified below."

Clarify what is exposed soils. END

#### Setbacks (SB)

##### DE-13

**Summary comment: Manhard Consulting suggests utilization of the current stream classification system based on presence of aquatic life and stream flow rather than reclassifying springs and seeps as a Class I watercourse. Manhard Consulting suggests that springs be defined separately in accordance with existing watercourse definitions. END**

*Summary response: The term "seep" has been removed from the Cannabis Policy. What was intended to be protected under the term "seep" will be protected under requirements for springs/artesian wells and/or wetlands as applicable. The riparian setback conditions of springs have also been modified to clarify the intent of classifying springs under Class I watercourses. Language has been added to Attachment A of the Cannabis Policy (Watercourse definition and Requirement 37 of Section 1 on Minimum Riparian Setbacks) to define a spring and distinguish between the setback around the head of a spring and the setback below the head of a spring. Additionally, the watercourse definitions have been updated to more closely align with the Forest Practice Rules. Information has been added to the Staff Report regarding the importance of springs and headwaters to the ecological health of watersheds. END*

*Cannabis documents referenced:*

##### 017.021

Comment text: While the legislation directed the water boards to address seeps and springs there is basis for affording all seeps the maximum level of protection. Most seeps are found at cut banks and are day lighted shallow groundwater and form a puddle. Which protections from waste discharges and altered hydrology is necessary, the distances identified, especially without a site-specific option will preclude participation by a numerous cultivators.

The riparian distances are greater than in any other regulatory requirements in California. Without options available to provide equal or greater beneficial use protection, the set-backs could be found to be a taking of private property.

The watercourse descriptions would be better to follow the forest practice rule definitions.

The variance should not only include a compliance schedule, but also allow for protections without dictating method and manner of compliance. END

##### SB-01

**Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END**

*Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END*

*Cannabis documents referenced:*

##### 002.001

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. END

#### 017.002

Comment text: There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END

#### 017.005

Comment text: While the riparian protection minimums are protective, and there is a process for a compliance schedule for achieving the minimums, there is no process for variance which would allow for alternative setback if warranted (e.g., hydrologic divides, dry farming, long established land uses). The order needs to have a process for regional board staff to allow alternative and smaller setbacks if warranted. END

#### 017.019

Comment text: Does this allow the regional water board the flexibility to follow a process that allows for site-specific variance to set back if warranted while ensuring water quality protection. END

### Site-specific WDRs, ILRP (WD)

#### WD-02

**Summary comment: Without a site specific variance procedure many north coast cultivators that otherwise qualify for regulatory coverage will not qualify for coverage under the cannabis general order. END**

*Summary response: The Cannabis General Order has been revised to allow more time for existing enrollees to transition to the Cannabis General Order. Cannabis cultivators currently enrolled under the North Coast or Central Valley Regional Water Board orders will not be required to transition to the Cannabis General Order until July 2019. The transition will allow cultivators to reconfigure their facilities to comply with the cannabis general order requirements. The draft Policy has been revised to allow existing enrollees with facilities permitted by the Cannabis General Order adoption date to continue operating with the originally approved Regional Water Board setback if the Executive Officer determines that the setbacks will be protective of water quality. END*

*Cannabis documents referenced: Order: pg 12, F39*

#### 017.020

Comment text: Without a site-specific variance option, the north coast cultivators who qualify for waste discharge regulatory coverage will be significantly decreased though they may meet all the other conditions and not pose a threat of waste discharges. END

#### WD-03

**Summary comment: Some cultivation areas enrolled under a Regional Board order are located on a slope greater than 50 percent which is not allowable under the General Order. END**

*Summary response: Slopes greater than 50 percent present significant water quality problems related to erosion. Slopes over 50 percent require structures or special techniques for stabilization. In very steeply sloping areas (50 percent or more), vegetation is best maintained to preserve native habitat and avoid erosion. The Policy prohibits new disturbance associated with cannabis cultivation activities on slopes greater than 50 percent. Cannabis cultivators operating cultivation activities on a slope greater than 50 percent are required to stabilize the area and cease cultivation activities unless they can obtain site-specific WDRs from the appropriate Regional Water Board. END*

*Cannabis documents referenced:*

#### 017.016

Comment text: What about existing cultivation areas that are already enrolled under the regional board order and are on sloped greater than 50%? END

### Stream crossing (SC)

#### SC-01

**Summary comment: In reference to item 41 in the Stream Crossing Installation and Maintenance section of Attachment A, instream work should include a site-specific plan from a qualified professional regardless if water is present or not. END**

*Summary response: Item 41 in Attachment A, Stream Crossing Installation and Maintenance section, requires development of a site-specific plan by a qualified professional if water is present to ensure that impacts to the quality of water in the stream are minimized. Additionally, the Cannabis Policy and Cannabis General Order require cannabis cultivators to obtain a water quality certification and Lake and Streambed Alteration Agreement when conducting instream work, which also ensure impacts to water quality and discharges to surface water are minimized. END*

*Cannabis documents referenced: Att A: Sec 2, pg 26, Item 41*

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**017.030**

Comment text: Instream work should include a site specific plan from a qualified profession, regardless if water present or not. END

**SC-08**

**Summary comment: "Cannabis cultivators shall not drive or operate vehicles or equipment within the riparian setbacks or within waters of the state unless authorized by a CWA section 404 permit, a CDFW LSA Agreement, or WDRs issued by the State Water Board or Regional Water Board."**

**This seems very restrictive and it is unclear under what authority the authorization would be issued. END**

*Summary response: The operation of equipment/vehicles within the riparian setbacks and within the waters of the state have the potential to cause discharges which can negatively impact aquatic wildlife and degrade aquatic habitat. END*

*Cannabis documents referenced:*

**017.023**

Comment text: "Cannabis cultivators shall not drive or operate vehicles or equipment within the riparian setbacks or within waters of the state unless authorized by a CWA section 404 permit, a CDFW LSA Agreement, or WDRs issued by the State Water Board or Regional Water Board."

This seems very restrictive and it is unclear under what authority the authorization would be issued. END

**Water diversion, storage (WS)**

**WS-08**

**Summary comment: "Cannabis cultivators shall not use off-stream storage reservoirs to store water for cannabis cultivation unless the reservoir is properly sited and has been designed by a qualified professional. Cannabis cultivators shall plant native vegetation along the perimeter of the off-stream storage reservoir."**

**What proof is required and to what standards? Vegetation planted on the berm can result in flow paths along the roots and weight on the berm.**

**END**

*Summary response: The Cannabis Policy (Requirement 86) has been modified to clarify the planting of native vegetation around water storage. The requirement now explains that the vegetation shall be planted in areas that will not impact the structural integrity of the reservoir berm or spillway. Additionally, vegetation management around the reservoir berm and spillway is required to provide for visual inspection and control of burrowing animals, as necessary.*

*The Cannabis Policy requires that off-stream storage reservoirs and ponds shall not be used to store water for cannabis cultivation unless site and designed or approved by a qualified profession in compliance with the Division of Safety of Dams, county, and/or city requirements, as applicable and provides for other design criteria when no such requirements are established.*

**END**

*Cannabis documents referenced:*

**017.033**

Comment text: "Cannabis cultivators shall not use off-stream storage reservoirs to store water for cannabis cultivation unless the reservoir is properly sited and has been designed by a qualified professional. Cannabis cultivators shall plant native vegetation along the perimeter of the off-stream storage reservoir."

What proof is required and to what standards? Vegetation planted on the berm can result in flow paths along the roots and weight on the berm.

END

**WS-10**

**Summary comment: There is concern with the requirement to maintain sufficient freeboard in offstream reservoirs to capture the input from a 25-year, 24 hour storm event. Such design and operation requirements may result in additional costs and unintended consequences. END**

*Summary response: These Requirements have been updated to reflect the comments received. All off-stream storage reservoirs and ponds shall be designed, managed, and maintained to accommodate average annual winter period precipitation and storm water inputs to reduce the potential for overflow. This will help address the concerns presented in the comments while also minimizing the environmental impacts that occur from reservoirs overflowing. END*

*Cannabis documents referenced: Att. A. Requirement 86*

**017.034**

Comment text: "Cannabis cultivators shall design and manage off-stream storage facilities that are open to the environment, such as storage ponds and reservoirs, to maintain sufficient freeboard to capture stormwater runoff of a representative 25-year, 24-hour storm event."

Is this protective enough? What is basis for 25-yr versus 100-yr with culverted crossings. END

**Water rights (WR)**

**WR-05**

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**Summary comment: Diversion of surface water for dust control is prohibited unless authorized under a valid water right.”  
What sort of water right is that? Storage via small irrigation? Is one available – i.e., is there a reasonable path to compliance??**

**END**

*Summary response: In California, any diversion of surface water must be done under a valid basis of right. Any valid water right can be used for dust control if it is a designated use. END*

*Cannabis documents referenced:*

**017.013**

Comment text: “Diversion of surface water for dust control is prohibited unless authorized under a valid water right.”

What sort of water right is that? Storage via small irrigation? Is one available – i.e., is there a reasonable path to compliance?? END

**WR-18**

**Summary comment: “In requesting such an exemption, cannabis cultivators shall provide substantial evidence demonstrating that the spring, seep, or artesian well does not have surface or subsurface hydrologic connectivity at any time of year during all water year types [3]. The substantial evidence must be documented by a qualified professional.” Should be consistent with the business and professions code. END**

*Summary response: The Policy’s definition for Qualified Professional clarifies the licensing or other requirements for performing analyses, plans, or other work consistent with the Business and Professions Code. It is the State Water Board’s understanding that technical analyses, plans, or other work should be prepared by a qualified individual to demonstrate that a spring does not have surface or subsurface hydrologic connectivity at any time of year during all year types per section 26060.1, subdivisions (a)(2)(A)(iv) and (a)(2)(B)(iii) of the Business and Professions Code. END*

*Cannabis documents referenced:*

**017.045**

Comment text: “In requesting such an exemption, cannabis cultivators shall provide substantial evidence demonstrating that the spring, seep, or artesian well does not have surface or subsurface hydrologic connectivity at any time of year during all water year types [3]. The substantial evidence must be documented by a qualified professional.”

Should be consistent with the business and professions code.  
END

**WS-04**

**Summary comment: There are many on-stream ponds that were built prior to 2007 on the north coast. There are also many older ponds where overflow has become a class III channel that does not connect to the stream system. Essentially these ponds are at the head of a class III. These ponds provide much needed storage on these properties. Many people who own these don’t even realize they need a water right for these ponds. Many of these properties are not current cannabis farms. Why have a Jan 1 2017 deadline? If the pond is determined to be stable and not a threat to water quality is should be allowed regardless of when the property enters the cannabis process. END**

*Summary response: The State Water Board has done extensive outreach on the north coast regarding water right requirements. Ultimately, it is the responsibility of the property owner and diverter to understand and comply with all applicable water right requirements. (See also, e.g., Wat. Code §1052.) The January 1, 2017 deadline has been updated to October 17, 2017 and is only a cut off for certain existing and permitted onstream reservoirs to qualify for a transfer to the Small Irrigation and Use Registration Program. All unpermitted onstream reservoirs will have to go through the appropriate water right process in order to determine that they are stable and not a threat to water quality or designated beneficial uses.*

*In addition, the Policy requires that all onstream reservoirs used for a cannabis cultivation shall be operated in a manner that is consistent with the requirements of the Policy including, but not limited to, all bypass flow requirements and forbearance periods.*

*END*

*Cannabis documents referenced:*

**017.032**

Comment text: There are many on-stream ponds that were built prior to 2007 on the north coast. There are also many older ponds where overflow has become a class III channel that does not connect to the stream system. Essentially these ponds are at the head of a class III. These ponds provide much needed storage on these properties. Many people who own these don’t even realize they need a water right for these ponds. Many of these properties are not current cannabis farms. Why have a Jan 1 2017 deadline? If the pond is determined to be stable and not a threat to water quality is should be allowed regardless of when the property enters the cannabis process. END

**Organnabliss Farms**

**Application for coverage (AP)**

**AP-09**

**Summary comment: The timelines for compliance should be broken down to two different timelines. One timeline for complying with cultivation site, workspace, housing areas, and setback requirements. A second timeline for complying with property-wide, legacy issues, and road system requirements. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy and General Order allow for a cultivator to establish a compliance schedule. Compliance schedules are commonly imposed by Regional Water Boards for dischargers that cannot immediately comply with an order requirement. It is anticipated that some compliance schedules will be reasonably brief (e.g., relocation of a compost pile) while others may require multiple construction seasons to comply (e.g., improvements to a legacy water course crossing). Although not specific, the procedure the commenter requests, already exists in the documents. Cannabis cultivators that cannot comply with certain requirements in the Cannabis Policy or the Cannabis General Order may contact the Regional Water Board to establish a time schedule for complying with the requirements. A change was not made in response to the comment. END*

*Cannabis documents referenced: Policy: pg 17, par 2. Att A, Sec 1, Item 5. Att A, Sec 1, Item 31. Att A, Sec 1, Item 36.*

**046.003**

Comment text: I suggest a two tiered set of timelines -1) for cultivation site and immediate area, workspace, housing areas, setbacks, etc 2) for rest of property, legacy issues, road systems. END

### Cost of compliance (CS)

#### CS-01

**Summary comment: The proposed requirements are too expensive to implement, especially for smaller farms. END**

*Summary response: The State Water Board's statutory mandate is protection of water quality. However, the State Water Board is aware of the costs of compliance imposed on cultivators and balances the requirements with the need to protect water quality. The cost of compliance is a function of the site specific conditions. Sites located a suitable distance from a water body on relatively level terrain are not required to implement a large number of BPTC measures. Sites located in close proximity to a water body or on a sloped property, are a higher threat to water quality and therefore are subject to additional BPTC measure requirements. Similarly, larger cultivation sites are an inherently higher threat to water quality and have additional requirements imposed upon them. For those facilities that cannot comply with the applicable BPTC measures, a schedule to achieve compliance can be obtained from the Regional Water Board. END*

*Cannabis documents referenced: Policy: pg 13, par 2, Item c; Policy: pg 15, par 4; Order: pg 3, Finding 7.c; Order: pg 5, Finding 13; Policy: pg 17, par 2; Policy: pg 22, par 5; Att A: Sec 1, pg 15, Item 31; Att A: Sec 1, pg 16, Item 36, fn 3; Att A: Sec 5, pg 70, par 6; Staff rpt: pg 71, par 4; Staff rpt: pg 72, par 3; Order: pg 14, Finding 42.a; Order: pg 21, C.3.a; Order: Att D, pg D-3, Item 5.4; Order: Att D, pg D-4, par 2; Order: Att D, pg D-9, par 2; Order: Att D, pg D-10, Item 6.1*

**046.002**

Comment text: As well as extending the time line in order to achieve compliance with rules. The costs associated with bringing rural properties into compliance with these rules in the suggested timeline are unachievable for most all small and craft license holders. Even if these farms were to do so, the investment at this critical time in transitioning to a legal industry would most likely plunge all of these farms into debt and fail from the start. END

### Monitoring, reporting (MR)

#### MR-10

**Summary comment: The Cannabis Policy and Cannabis General Order should include more flexibility in developing site-specific plans and mitigation options. END**

*Summary response: The requirements in the Cannabis Policy and Cannabis General Order are included as a means to protect water quality and reduce discharge to surface waters.*

*The Cannabis General Order allows cannabis cultivators that will not be able to comply with BPTC measures to request a compliance schedule from the Regional Water Board. Cannabis cultivators that believe alternative methods will provide equivalent water quality protection can discuss the issue with the Regional Water Boards. However, if the alternative is inconsistent with the Cannabis Policy and General Order, it may require site-specific WDRs (if allowed by the Policy requirements). END*

*Cannabis documents referenced:*

**046.001**

Comment text: I would suggest, especially for the North Coast Region, to have more flexibility in developing 'site specific' plans and mitigation options. END

### Regulatory structure (RS)

#### RS-26

**Summary comment: A big question a lot of folks are asking is why there is no mention of any water quality monitoring, impacts, study, or regulation around Indoor Cultivation? Certainly, a Commercial Indoor Grow will have pollution entering back into municipality, drains, waterways etc. Please adopt rules, study, and guidelines to prevent and mitigate industrial water pollution from indoor cannabis sites. (82.004) END**

*Summary response: Indoor cultivation is defined in the Cannabis Policy and General Order as cannabis cultivation activities that occur within a structure with a permanent roof and a permanent relatively impermeable floor. Such cultivators will either discharge their wastewater to a community collection system (sewer), or to an onsite wastewater treatment system. The sewer discharges must be authorized by the agency operating the sewer collection and wastewater treatment system. Discharges to an onsite wastewater treatment system will require additional authorization (a second WDR or similar administrative mechanism such as a waiver of WDRs) by the Regional Water Board. END*

*Cannabis documents referenced: CCP, Exemption for Indoor Cultivation Activities, pg. 16*

**046.004**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: A big question a lot of folks are asking is why there is no mention of any water quality monitoring, impacts, study, or regulation around Indoor Cultivation? Certainly a Commercial Indoor Grow will have pollution entering back into municipality, drains, waterways etc. Please adopt rules, study, and guidelines to prevent and mitigate industrial water pollution from indoor cannabis sites. END

#### Ortiz, Chrystal

##### Cost of compliance (CS)

###### CS-16

**Summary comment: Some of the terms in Attachment A may be unnecessarily overly restrictive and pose challenges for implementation or impose increased costs without environmental benefit.**

**The proposed requirements would cause myself and many other farmers throughout the county massive economic hardship at a time when our region can ill afford it  
END**

*Summary response: The cost of compliance is an unavoidable part of implementing any water quality control policy that will both protect and enhance the existing environment and incorporate oversight for those protections. Direct cost analysis of the Cannabis Policy has been developed and can be found under Item 6 at the State Water Board's October 17, 2017 meeting agenda, which is available online at: [https://www.waterboards.ca.gov/board\\_info/agendas/2017/oct/101717\\_agenda.pdf](https://www.waterboards.ca.gov/board_info/agendas/2017/oct/101717_agenda.pdf). There are two main costs: costs associated with regulatory oversight, and cost associated with cultivation site measures. Regulatory oversight costs are required to fund the state programs that both monitor and enforce the Cannabis Policy requirements. Regulatory costs are set by what funding is reasonably needed to perform those monitoring and enforcement tasks.*

*The State Water Board developed the Policy and associated requirements based on the practicalities of cannabis cultivation operations and the reality of water quality- and aquatic habitat-related impacts from cannabis cultivation in California. Compared to other irrigated agriculture, there are tangible differences in how and where cannabis is grown - detailed in the Staff Report - that militate in favor of cannabis-specific requirements that in many cases differ from requirements applicable to other irrigated agriculture. To give one example, cannabis cultivation operations tend to be concentrated high in the watershed, near headwaters or small tributaries that are more sensitive to waste discharges and water diversions than larger streams that flow at lower elevations. In contrast, much of California's irrigated agriculture occurs on flat and/or open terrain where any nearby waterbodies are less sensitive to changes in diversion patterns or waste discharges. Additionally, land disturbance activities associated with irrigated agriculture more frequently occur far enough away from nearby waterbodies that express riparian setback requirements are unnecessary.*

*Additionally, changes have been made to the Cannabis General Order that will potentially lower the costs of compliance for cannabis cultivators enrolled in an existing waste discharge requirement program. The first change is an extension of the transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019, allowing an extra year for cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the Cannabis General Order adoption date will be allowed to continue operating with the originally approved Regional Water Board setback if the Executive Officer of the applicable Regional Water Board determines that the setbacks will be protective of water quality.  
END*

*Cannabis documents referenced: Add reference to Direct Cost Analysis when we know where it will be.*

###### 075.001

Comment text: Humboldt, Mendocino and TRINITY county are economically disadvantaged to the rest of the state and many of the actions in the proposed regs will destroy the economic livelihood of the areas. END

##### Regulatory structure (RS)

###### RS-25

**Summary comment: To attempt to regulate a rural parcel with LESS THAN 1/4 acre garden the same as the industrial agriculture monoliths cropping up is destined to destroy the progress we have made thus far. (75.004) END**

*Summary response: The State Water Board's responsibility is protection of water quality. However, the State Water Board is aware of the costs of compliance imposed on cultivators and balances the requirements with the need to protect water quality and beneficial uses. The cost of compliance is a function of the-site specific conditions. Sites located a suitable distance from a water body on relatively level terrain are not required to implement a large number of BPTC measures. Sites located in close proximity to a water body or on a sloped property, are a higher threat to water quality and therefore are subject to additional BPTC measure requirements. Similarly, larger cultivation sites may be a higher threat to water quality and, therefore, have additional requirements imposed upon them. For those facilities that cannot comply with the applicable BPTC measures, a schedule to achieve compliance can be obtained from the Regional Water Board.  
END*

*Cannabis documents referenced:*

###### 075.004



## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: We MUST have an opportunity to participate, and the MAJORITY of farms will not meet these onerous thresholds. To attempt to regulate a rural parcel with LESS THAN 1/4 acre garden the same as the industrial ag monoliths cropping up is destined to destroy the progress we have made thus far. END

#### Setbacks (SB)

##### SB-01

**Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END**

*Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END*

*Cannabis documents referenced:*

##### 075.002

Comment text: Many farmers have enrolled with huge support into the regional program for waste discharge and invested \$\$\$\$\$\$ ( at huge financial burden) to meet those setbacks. The fact that the state is changing the setbacks with no site specific variance is devastating.

...

The majority of our gardens are under an acre and cannot and will not scale. At the very least, we NEED site specific plans and setbacks that will allow farmers to protect their watershed without onerous and devastating regulations. END

##### 075.003

Comment text: PLEASE allow for hired professionals to create a protection plan that mitigates setbacks, adequately addresses water use and does not create beaureacratc red tape that does not make sense to the smallest of farms. END

#### Pacific Watershed Associates

##### Cost of compliance (CS)

##### CS-02

**Summary comment: Review the requirement to use qualified professionals to determine if necessary considering the cost and burden of hiring specialists. END**

*Summary response: Use of qualified professionals ensures that work is performed by qualified individuals. This is consistent with the California Business and Professions Code, which requires technical reports that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, to be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. See the definition of qualified professional in the Cannabis Policy and General Order Attachment A for a list of other professionals that may supervise technical report preparation.*

*The due date for certain technical reports has been removed from the Cannabis General Order to allow cannabis cultivators to submit the reports in accordance with their schedule for conducting cultivation and cultivation-related activities. Additionally, applicants that are currently enrolled in the North Coast Regional Water Board's Conditional Waiver of WDRs or the Central Valley Regional Water Board's General WDRs will not be required to enroll under the Cannabis General Order until July 2019. END*

*Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Att A: Sec 1, pg 9, Item 5; Att A: Sec 2, pg 20, Item 5; Att A: Sec 2, pg 21, Items 8-9; Att A: Sec 2, pg 22, Items 13-14; Att A: Sec 2, pg 23, Item 23; Att A: Sec 2, pg 24, Items 26-27, 29-31; Att A: Sec 2, pg 26, Item 41; Att A: Sec 2, pg 28, Item 48; Att A: Sec 2, pg 29, Item 56; Order: Att D, pg D-4 through D-5 & D-9 through D-10*

##### 049.003

# Cannabis Cultivation Policy and General Order Response to Public Comments

## COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: 3) Provisions – Item #1, page 17: Technical Reports in many cases need to be prepared by licensed and experienced professionals. The Erosion and Sediment Control Plan, Disturbed area Stabilization plan and others may be needed on many hundreds or thousands of Project Sites. Because there are likely to be literally thousands of such Project Sites, applicants, and required plans, it is highly unlikely that there are enough qualified individuals and consultants available to meet the 90 day time-line requirements listed in the Draft Order. This will make it impossible for some landowners and operators to comply with the letter of the Order's requirements. END

### Monitoring, reporting (MR)

#### MR-11

**Summary comment: There should be more effort to integrate and address work that has already been done through the Water Resource Protection Plans developed as part of the requirements in the North Coast's Conditional Waiver of WDRs. END**

**Summary response: The Cannabis General Order requires a Site Management Plan, which is a report similar to the Water Resource Protection Plan that is required by the North Coast Regional Water Board Conditional Waiver of WDRs. Development of the Site Management Plan should involve relatively minor revision to the Water Resource Protection Plan to comply with the Cannabis General Order. END**

*Cannabis documents referenced:*

#### 049.001

Comment text: 1) There should be considerably more effort made to integrate and address all the NCRWQCB's requirements and actions already in place and identified within Water Resource Protection Plans (WRPP) that have been developed under the Regional Board's Waiver of Waste Discharge program. Landowners and operators want to specifically know how that transition will work and if the work they have already done is for naught, or if the elements they agreed to in their WRPPs are still required, applicable and mandated under the new program. END

### Resource, funding (RF)

#### RF-02

**Summary comment: We suggest other incentives be put in place to help small landowners meet these objectives, including ...funding to help defray the costs of working with qualified, approved professionals who will prepare their plans and documents. END**

**Summary response: There is currently no funding directly related to working with qualified professionals for cannabis cultivation. END**

*Cannabis documents referenced: --*

#### 049.005

Comment text: We suggest other incentives be put in place to help small landowners meet these objectives, including ...funding to help defray the costs of working with qualified, approved professionals who will prepare their plans and documents. END

#### RF-03

**Summary comment: The Draft Order appears to be a positive step to help landowners meet these same standards and objectives. We find that most landowners, once they have been made aware of the short-comings in their management activities, want to protect water resources in their watersheds. It is important to make sure there is a positive incentive for small landowners to comply with the proposed Order. Most of them do not have a lot of money, but are still interested in working to improve watershed conditions. At present, in the Draft Order, the primary landowner incentive is the threat of enforcement. We suggest other incentives be put in place to help small landowners meet these objectives, including how-to workshops, funding for rainwater harvesting and various water conservation programs and techniques END**

**Summary response: The Cannabis Policy does not provide funding to landowners. It is the responsibility of the landowner to ensure that the operation meets all of the requirements. The Cannabis Policy has been updated to allow grace periods for landowners to come into compliance with certain requirements. The Water Boards will continue to develop outreach materials, hold workshops/meetings to provide information on the Water Boards cannabis regulatory programs, and respond to questions from the regulated community. END**

*Cannabis documents referenced:*

#### 049.004

Comment text: The Draft Order appears to be a positive step to help landowners meet these same standards and objectives. We find that most landowners, once they have been made aware of the short-comings in their management activities, want to protect water resources in their watersheds. It is important to make sure there is a positive incentive for small landowners to comply with the proposed Order. Most of them do not have a lot of money, but are still interested in working to improve watershed conditions. At present, in the Draft Order, the primary landowner incentive is the threat of enforcement. We suggest other incentives be put in place to help small landowners meet these objectives, including how-to workshops, funding for rainwater harvesting and various water conservation programs and techniques END

### Setbacks (SB)

#### SB-01

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment:** *I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order.* **END**

*Summary response:* The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. **END**

Cannabis documents referenced:

**049.002**

Comment text: 2)Setbacks in the proposed State Order are different and generally more restrictive than for the Regional Board's Order. Landowners have in many cases, spent considerable time and expense moving facilities to meet the Regional Board's Order requirements. There should be some provision for allowing additional time to again make modifications for moving facilities to meet the new requirements. The proposed time line is too short for this to occur.  
**END**

**Parsons, Jesse**

**Grandfather coverage (GR)**

**GR-01**

**Summary comment:** *Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order.* **END**

*Summary response:* The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.

The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).

California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.  
**END**

Cannabis documents referenced:

**037.002**

Comment text: I am asking for a site specific exemption or a time extension to remediate and move garden site. Requesting the data behind the setback change. **END**

**Setbacks (SB)**

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**SB-01**

**Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END**

*Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END*

*Cannabis documents referenced:*

**037.001**

Comment text: If the riparian set backs are set at 150, I will not be able to cultivate my site. Requesting the data behind the setback change."  
END

**Ramirez, Monique**

**Tribal, cultural (TC)**

**TC-16**

**Summary comment: In Covelo, CA, located in Mendocino County there is a checkerboard reservation that exists throughout the Valley. This 600 ft setback will wipe out many cultivators in the town.**

**I strongly urge the policy makers to remove this 600 ft. setback requirement.**

**END**

*Summary response: The Cannabis Policy allows cannabis cultivation within 600 feet of tribal lands, i.e., lands recognized as "Indian country" within the meaning of title 18, United States Code, section 1151, if the governing body of the affected tribe provides its express written permission. Accordingly, cannabis cultivation activities will not be affected if the governing body of the affected tribe provides its express written permission. The State Water Board respectfully encourages affected cannabis cultivators to request express written permission to continue their operations from the affected tribe.*

*This requirement is necessary to prevent coverage gaps in light of the interplay of state, federal, and tribal jurisdiction on lands identified in title 18, United States Code, section 1151. For example, State Water Board enforcement staff have encountered illegal cannabis cultivation operations straddling the boundaries of Indian reservations, complicating enforcement efforts by state and tribal authorities. Requiring an affected tribe's authorization helps ensure that state, federal, and tribal governments, as applicable, can appropriately administer applicable law.*

*END*

*Cannabis documents referenced:*

**067.001**

Comment text: In Covelo, CA, located in Mendocino County there is a checkerboard reservation that exists throughout the Valley. This 600 ft setback will wipe out many cultivators in the town.

I strongly urge the policy makers to remove this 600 ft. setback requirement END

**Rondeau, Thomas**

**Basin Plans, TMDLs (BP)**

**BP-01**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: The cost of compliance in north coast is significantly higher than in other regions due to property-wide and legacy requirement. Already north coast cultivators are struggling to become legal cultivators due to the regulatory costs. The property wide/ legacy requirement should apply to the whole state. Without the grace of time, few cultivators are going to be willing to try to go legal.**

**The state should contribute to the remediation of legacy issues (say 50 - 50 with the farmers), and allow a lot more time to mitigate them. END**

*Summary response: The legacy requirement is imposed upon cultivators in the North Coast Region because the North Coast Regional Water Board adopted basin plan amendments that require it. California Water Code Section 13263(a) requires waste discharge requirements to implement any relevant water quality control plan (basin plan). The North Coast Region is home to numerous threatened and endangered species that are sensitive to excessive sediment, temperature fluctuations, and reduction of suitable habitat. The migration, spawning, reproduction, and early development of cold water fish such as salmon and trout species, some of which are listed as threatened under the Federal Endangered Species Act, are impacted in the North Coast Region due to water quality impairments and other conditions.*

*The North Coast Region has adopted policies to support restoration efforts and to attain or maintain water quality objectives. The General Order is consistent with the Basin Plan for the North Coast Region, the Temperature Implementation Policy, and the Sediment TMDL Implementation Policy by requiring all dischargers that are landowners of a cultivation site in the North Coast Region to develop Site Management Plans that identify compliance with best practicable treatment or control measures property-wide, including discharges from legacy activities (e.g., former timber harvest, road building, mining, etc.) at the site.*

*The transition period has been extended to July 1, 2019. The extension provides additional time the commenter requested. There is currently no funding directly related to proportioning the costs of remediating legacy issues between the state and cannabis cultivators.*

*END*

*Cannabis documents referenced: Att A: Sec 5, pg 69, par 2.*

*Order: pg 9 – 10, F.30 – F.35; pg 17, C.1.*

#### 026.004

Comment text: The unfairness stems from requiring cannabis cultivators to do more than any other agriculturalist in the state, and particularly the approach to legacy issues that the farmer often did not create. Indeed, the logging and fishing industries historically have done far more damage than the cannabis cultivators, and although they essentially destroyed their businesses by years of overharvesting, the mess they left behind should not fall on the cannabis cultivators, at least not as something that must be corrected immediately. Without the grace of time, few cultivators are going to be willing to try to go legal. END

#### 026.007

Comment text: The effort seems to be to lay on the cannabis cultivators the task of cleaning up much of the waters of the State, even though many causes other than cannabis farming have placed them in the perilous condition that the drafters of the Policy perceive them to be in. Moreover, the heady days of Lewis and Clark plucking giant salmon from the teeming waters of the Columbia River are forever gone. Even the days of sustainable fishing the more modest rivers like the Eel and the Mad are gone. Our government, the same one that is now valuing impossibly pristine watersheds and trying to make cannabis cultivators restore the State's watershed to some ideal condition in complete ignorance of reality, was what allowed the watersheds to deteriorate to their present conditions. And it was overlogging and overfishing, as well as poor agricultural practices, and governmental indulgence in those activities, as much as cannabis farmers, that has put us where we are today. END

#### 026.008

Comment text: The state should contribute to the remediation of legacy issues (say 50 - 50 with the farmers), and allow a lot more time to mitigate them. END

### Cost of compliance (CS)

#### CS-01

**Summary comment: The proposed requirements are too expensive to implement, especially for smaller farms. END**

*Summary response: The State Water Board's statutory mandate is protection of water quality. However, the State Water Board is aware of the costs of compliance imposed on cultivators and balances the requirements with the need to protect water quality. The cost of compliance is a function of the site specific conditions. Sites located a suitable distance from a water body on relatively level terrain are not required to implement a large number of BPTC measures. Sites located in close proximity to a water body or on a sloped property, are a higher threat to water quality and therefore are subject to additional BPTC measure requirements. Similarly, larger cultivation sites are an inherently higher threat to water quality and have additional requirements imposed upon them. For those facilities that cannot comply with the applicable BPTC measures, a schedule to achieve compliance can be obtained from the Regional Water Board. END*

*Cannabis documents referenced: Policy: pg 13, par 2, Item c; Policy: pg 15, par 4; Order: pg 3, Finding 7.c; Order: pg 5, Finding 13; Policy: pg 17, par 2; Policy: pg 22, par 5; Att A: Sec 1, pg 15, Item 31; Att A: Sec 1, pg 16, Item 36, fn 3; Att A: Sec 5, pg 70, par 6; Staff rpt: pg 71, par 4; Staff rpt: pg 72, par 3; Order: pg 14, Finding 42.a; Order: pg 21, C.3.a; Order: Att D, pg D-3, Item 5.4; Order: Att D, pg D-4, par 2; Order: Att D, pg D-9, par 2; Order: Att D, pg D-10, Item 6.1*

#### 026.003

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: I estimate that the cost of compliance to a typical cultivator dealing with typical legacy issues, ones often not created by the current cultivator but pre-existing when he bought his property, as well as dealing with his own current practices would exceed \$100,000, and in many cases exceed \$200,000. And this when the revenue from cannabis farming is about one third of what it was just a few years ago. Just the reports required would bury most cultivators in red tape and formalistic duties considerably beyond their abilities. And requiring certain professionals to prepare the reports is also a guarantee of noncompliance. I suspect that there are not enough qualified professionals in the state to timely prepare all of the reports the Policy demands. END

#### Enforcement (EN)

##### EN-01

**Summary comment:** *"The concerns expressed in the Policy are legitimate, and should be addressed. But unless they are handled a lot more sensitively, few cultivators will transition into the legal market. Historically, eradications have run at about 1% or less of the active growers. The growers all know this; they are comfortable with the risks. Even if the eradication rate is doubled, something unlikely due to the lack of money, there is still only about a one in fifty chance that any cultivator will be hit. This combination of unfairness and lack of necessity will keep most cultivators in the black market. The anticipated tax revenues will not occur, the cost of eradications will have to dramatically increase if that path is used to force compliance. This is known as killing the goose that lays the golden eggs. (Ref: 26.005)"*

**END**

**Summary response:** *The State Water Board had developed the requirements of the Policy with an eye toward practicable implementation and reasonable timeframes for cultivators to come into compliance. Based on stakeholder feedback received during the outreach phase of developing the Policy, the State Water Board struck a necessary balance between requirements that would reasonably protect water quality and beneficial uses of waters of the state and accommodation of the practicalities facing cannabis cultivators. In that context, the State Water Board does not agree that the requirements of the Policy are so onerous that they will increase participation in illegal cannabis cultivation. However, the Water Code mandates that the State Water Board update the Policy as needed, and the State Water Board may revise certain requirements based on cannabis cultivators' experience implementing this Policy. END*

*Cannabis documents referenced:*

##### 026.005

Comment text: The concerns expressed in the Policy are legitimate, and should be addressed. But unless they are handled a lot more sensitively, few cultivators will transition into the legal market. Historically, eradications have run at about 1% or less of the active growers. The growers all know this; they are comfortable with the risks. Even if the eradication rate is doubled, something unlikely due to the lack of money, there is still only about a one in fifty chance that any cultivator will be hit.

This combination of unfairness and lack of necessity will keep most cultivators in the black market. The anticipated tax revenues will not occur, the cost of eradications will have to dramatically increase if that path is used to force compliance. This is known as killing the goose that lays the golden eggs.

END

#### Regulatory structure (RS)

##### RS-07

**Summary comment:** *The Cannabis Policy and General Order were developed in a haste, which makes the Policy confusing and unclear for dischargers to comply with but also for regulators to enforce. Puts undue burden on grower trying to comply and regulator trying to administer. What submittals and approvals are required? (21.001, 21.017, 26.009, and 21.07) END*

**Summary response:** *The Cannabis Policy and General Order were developed to address the changing legal environment in California regarding cultivation of cannabis. The rapid development is needed to accommodate cultivators that want to participate in the cannabis marketplace. To participate in the commercial marketplace, cultivators will need a cultivator license from the CDFA. To obtain the CDFA license, proof of compliance with Water Board requirement is required.*

*Depending upon the site specific conditions at the cultivation site, different technical reports are required. Information is contained in the Cannabis General Order as follows: application information is contained in the Application Procedure section, technical report requirements are presented in the Provisions section, for Tier 1 or Tier 2 cultivators regular monitoring and reporting is required, which is described in Attachment B.*

*The receipt provided by the on-line application will summarize the technical reports for the applicant. Once the fee is paid, the notice of applicability (which formally provides authorization) will include a summary of report requirements. END*

*Cannabis documents referenced:*

##### 026.009

Comment text: Give more time, allow problems that have existed for decades to continue a little longer so long as they are on track to be remedied within, say, five years. END

##### RS-13

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: What other industries are as strictly regulated as the proposed regulations for Cannabis industry? The proposed regulations, including legacy condition requirements should apply to all agricultural and timber related activities that have a negative impact on water quality, aquatic habitat, riparian-habitat, wetlands, and springs. Cannabis cultivators are being singled out and regulated differently than any other agricultural industry in the State of California. (26.001, 80.004, 80.017) END**

*Summary response: Consistent with California Water Code section 13260, any waste discharge that could affect the water quality of the state requires the discharger to submit a report of waste discharge and obtain WDRs prior to initiating the discharge. Regulated discharges include a wide spectrum of activities including domestic wastewater discharges to septic tanks, food processing wastewater, timber harvest activities, agricultural food production, etc. Because cannabis cultivation is an activity that could affect the water quality of the state, it is also regulated. Additionally, SB 837 (codified as Water Code section 13149) expressly requires the State Water Board to develop a policy for water quality control to protect springs, wetlands, and aquatic habitat from the negative impacts of cannabis cultivation, specifically. It is pursuant to that legislative mandate that the State Water Board has developed the Policy and General Order.*

*The California Water Code section 13263 requires WDRs to implement any applicable water quality control plan (basin plan). The North Coast Regional Water Board has adopted basin plan amendments that address legacy issues, therefore they must be addressed for cultivators within the North Coast Region.*

*END*

*Cannabis documents referenced:*

#### 026.001

Comment text: What other industry is as strictly regulated as the proposed regulations of all kinds planned to govern the cannabis industry?  
END

#### RS-14

**Summary comment: Controls placed on Cannabis farmers regarding water should be similar to those placed on other agricultural enterprises. There is a danger of crop conversions and cannabis cultivators will keep expanding to other areas because of loose regulations. END**

*Summary response: Because cannabis as a commodity was illegal until Proposition 215 passed, cannabis cultivation was and in many cases still is performed in remote areas. Cultivation activities in these remote areas (often different areas than traditional agricultural lands) can result in unique impacts associated with more intense land disturbance (e.g., road building and site development in remote areas) and the potential to impact threatened and endangered fish and aquatic species (i.e., coastal watersheds and headwater streams). In many of these areas cultivators rely on local surface water for irrigation. The ongoing proliferation of cannabis cultivation has the potential to result in waste discharges and excessive diversions of water that impact water quality and beneficial uses of water.*

*Water Code Section 13149 directs the State Water Board to "adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. The principles and guidelines adopted under this section may include, but are not limited to, instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. The principles and guidelines may include requirements that apply to groundwater extractions where the board determines those requirements are reasonably necessary for purposes of this section." Additionally, Water Code Section 13149 states "The principles and guidelines, including the interim principles and guidelines, shall include measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation." The State Water Board must abide by the Water Code and is therefore unable to treat cannabis cultivation like other agriculture activities that use water diversions.*

*END*

*Cannabis documents referenced:*

#### 026.002

Comment text: My overriding concern about the Policy is that it treats water as the center of the universe, and demands that cannabis farmers subordinate everything to the concerns of water and related environmental issues. Water is important, and is becoming more so due to changing weather patterns and increasing pollution. Environmental harm is likely to get worse under the present administration in Washington. But the controls placed on cannabis farmers regarding water should be similar to those placed on other agricultural enterprises. END

#### RS-16

**Summary comment: The effect of the Policy will be to force most cultivators to remain in the black market because legacy and current issues concerning water and environment identified in the policy remain unchanged. Approving regulations that disregard previous compliance activities and replaces them with new and extensive requirements, the State Water Board is inadvertently encouraging the black market and hence the continuation of environmental degradation. (26.006,74.003) END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Summary response: California Water Code section 13263 requires WDRs to implement any applicable water quality control plan (basin plan). The North Coast Regional Water Board has adopted basin plan amendments that address legacy issues, therefore they must be addressed for cultivators within the North Coast Region

The State Water Board modeled the statewide Cannabis General Order on the North Coast and Central Valley Regional Water Board orders. The Cannabis General Order does not disregard the previous compliance efforts. It includes a compliance schedule and allows for a site specific compliance schedule for those sites with longer term implementation plans. Because the North Coast Regional Water Board approved the previous compliance plans, there is no reason to believe they would not renew the existing agreements.

The Cannabis Policy and General Order only address legal cannabis cultivation activities. Black market or illegal cultivation activities are issues for law enforcement.

END

Cannabis documents referenced:

**026.006**

Comment text: The effect of the Policy, I fear, will be to force most cultivators to remain in the black market, with the result that the legacy and current issues concerning water and the environment as identified in the Policy will largely remain unchanged. It should, I think, create a path that will realistically induce cultivators into the legal market. END

#### Roye, Carol

##### Grandfather coverage (GR)

###### GR-01

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.

The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).

California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.

END

Cannabis documents referenced:

**055.001**

Comment text: Although these riparian rules apply to the newly adopted legislation, I would like the State of California to grand father the growers who have continually farmed without disturbing the environment. END

#### Outreach, public notification (OP)

###### OP-01

**Summary comment: Outreach was insufficient. END**



## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Summary response: The State Water Board held or participated in the following meetings during the development of the Cannabis Policy:

- Eight public outreach meetings to solicit comments on Policy development - August 31 - October 4, 2016 (throughout CA)
- Calaveras County Water District Meeting – September 28, 2016 (Andreas)
- Siskiyou County Board of Supervisors Meeting – October 4, 2016 (Yreka)
- North Coast Regional Board Meeting – October 20, 2016 (Santa Rosa)
- North Coast Watersheds Science and Management Exchange Program – February 2, 2017 (Douglas City)
- California Water Action Plan Meeting – February 8, 2017 (Briceland)
- American Fisheries Society Conference – April 7, 2017 (Eureka)
- Mendocino County Permit Meetings – April 19, 2017 (Laytonville and Willits)
- Meetings with Association of California Water Agencies, Northern CA Water Association, Farm Bureau, wine stakeholders, water rights stakeholders – May 25, 2017
- California State Association of Counties, Humboldt County Regional Meeting – June 29, 2017 (Eureka)
- California Department of Food and Agriculture Draft Environmental Impact Report Public Meetings – July 11-20, 2017 (throughout CA)
- CA Growers Association Meetings – July 29, 2016; January 18, 2017; and July 10, 2017 (Sacramento)
- Two Public Information Meetings for Draft Policy and Draft General Order – July 20, 2017 (Eureka) and July 27, 2017 (Sacramento)
- Tribal Consultation with Karuk Tribe – August 1, 2017 (Orleans)
- State Water Board Workshop on Draft Policy and General Order – August 2, 2017 (Sacramento)
- Santa Cruz County State Cannabis Licensing Workshop – September 14, 2017 (Santa Cruz)
- Tribal Consultation with Blue Lake Rancheria, Yurok Tribe, Karuk Tribe, Bear River Band of the Rohnerville Rancheria, Hoopa Valley Tribe, and Wiyot Tribe – September 26, 2017 (Blue Lake)

Meetings held by the State Water Board were noticed in local newspapers some of which include the Press Democrat, Ukiah Daily Journal, Sacramento Bee, Fresno Bee, LA Times, San Francisco Chronicle, Ventura County Star, and Eureka Times Standard. Notices were also sent electronically to anyone who had signed up for the State Water Board's "Cannabis Cultivators" email subscription list as well as the cannabis email lists for the North Coast Regional Water Board and the Central Valley Regional Water Board. State Water Board staff also participated in radio broadcasts and mailed the Notice of Public Hearing to all enrollees and applicants for coverage under the North Coast Regional Water Board and Central Valley Regional Water Board cannabis general orders..

At meetings, State Water Board staff informed the public of the State Water Board's efforts related to cannabis cultivation. Staff consistently solicited information and input from any interested parties, especially those that were involved in cannabis cultivation.

END

Cannabis documents referenced:

**055.002**

Comment text: The team of Engineers and Scientist who are shaping this policy must also collaborate with the farms of these regions. END

### Santa Clara Valley Audubon Society; Citizens Committee to Complete the Refuge

#### Application for coverage (AP)

**AP-03**

**Summary comment: Roads and other permanent or temporary projects that are exempt in the Cannabis General Order and Cannabis Policy but that would need a Clean Water Act section 401 or section 404 permit, or a Lake and Streambed Alteration agreement, should be included as part of the total disturbed area calculation. END**

Summary response: The Cannabis Policy exempts new and/or existing roads that were built and maintained in accordance with the Road Handbook from the total disturbed area calculation. The Cannabis Policy also requires implementation of BPTC measures for maintenance of existing roads and associated storm drainage features. Activities authorized under a CDFW Lake or Stream Alteration Agreement or under a water quality certification, and built in accordance with the Road Handbook and Forest Practice Rules, are exempt from the total disturbed area calculation because these applicants are already required to implement standards to reduce sediment discharges to surface waters. END

Cannabis documents referenced: Land Disturbance Definition: Policy: Att B, pg 6, par 1; Staff rpt App 3, pg 6, par 1

WQ Cert/LSA exempt from disturbed area total: Policy: pg 13, par 10; Policy: pg 17, par 2; Att A: Sec 5, pg 70, par 3; Staff rpt: pg 33, par 4; Staff rpt: pg 34, par 1; Staff rpt: pg 72, par 3; Order: pg 4, F11; Order: pg 13, F41.f.iii; Order: pg 17, Table 2, fn 5; Order: pg 18, Item C.1.c; Order: Att D, pg D-9, par 3

Forest Practice Rules: Att A: Sec 5, pg 70, par 4; Staff rpt: pg 37, par 2

BPTC: Att A: Sec 2, pg 20, Item 5; Att A: Sec 2, pg 22, Items 16-29; Att A: Sec 2, pg 28, Items 50-51, 55, 56; Staff rpt: pg 37, par 1

**050.007**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text:

Definition of High Risk Sites. (Policy Implementation and Compliance, Application Process and Fees, page 17): Sites that pose a higher threat to water quality are defined as sites that disturb a larger area, located on a steeper slope, or located close to a surface water body... Therefore, we ask that all activities that include permanent or temporary intrusions into the riparian setback such as would require CWA 401 and 404 permits as well as CDFW Lake and Streambed Alteration agreements be defined as "High Risk" END

#### 050.008

Comment text: Land Disturbance definition provides,

"...land areas where natural conditions have been modified in a way that may result in an increase in turbidity in water discharged from the site. Disturbed land includes areas where natural plant growth has been removed whether by physical, animal, or chemical means, or natural grade has been modified for any purpose. Land disturbance includes all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access. Land disturbance activities include, but are not limited to, construction of roads, buildings, water storage areas; excavation, grading, and site clearing. Disturbed land includes cultivation areas, storage areas where soil or soil amendments (e.g., potting soil, compost, or biosolids) are located." (Attachment A: Requirements for Cannabis Cultivation. Overview, Definitions, Definition 11).

As expressed above, we are concerned because this definition covers "all activities whatsoever" including access and construction of access roads, yet the Policy exempts roads that receive CWA Section 404/401 permits from being included in areas treated as disturbed land in riparian setbacks. We are opposed to this exclusion. Construction and enhancement of access roads should not be exempted by the Policy and Guidelines.  
END

#### CEQA, permits (CQ)

##### CQ-01

**Summary comment: While this draft, when amended, could qualify covered cannabis activities for a CEQA exemption, this draft must also make clear that irrespective of this Cannabis Policy, any action with the potential to impact state waters or state-listed endangered species will trigger CEQA. END**

*Summary response: CEQA applies only to discretionary approvals of "projects" by state or local government agencies. Thus, actions by private individuals and actions by state or local agencies that are not discretionary approval of "projects" do not trigger CEQA. Therefore, the commenter's suggested addition would be an incorrect statement of the scope of the law.*

*As stated in the Policy, Water Code section 13149, subdivision (b)(1), provides that the Policy shall qualify for a categorical exemption, and that the exception to categorical exemptions when activities may nonetheless have a significant impact on the environment shall not apply. ("Notwithstanding Section 15300.2 of Title 14 of the California Code of Regulations, actions of the board ... under this section shall be deemed to be within Section 15308 ..., provided that those actions do not involve relaxation of existing streamflow standards.") In effect, this statutory exemption precludes the State Water Board from applying CEQA to the Policy so long as the Policy does not reduce allowable instream flows. This statutory exemption was enacted by the California Legislature and therefore is beyond the State Water Board's legal authority to change. END*

*Cannabis documents referenced:*

#### 050.005

Comment text: California Environmental Quality Act (CEQA): The statement that "This Policy meets the requirements of Water Code section 13149(b)(1) and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations, title 14, section 15308" (Page 6, Cannabis Cultivation Policy Overview) is of great concern to us... We believe that the Policy and Guidelines should be re-written to clearly state that any actions or projects with potential impacts to Waters of the State and/or federal or state endangered and threatened species will require CEQA review. END

##### CQ-03

**Summary comment: Protection of endangered and threatened species: The policy as presented (General Requirement 4) describes the applicant's responsibility in regards to special status species plants and wildlife under state and federal law but lacks guidelines that present steps that would initiate consultation with NMFS, USFWS and CDFW. While it does make the cultivator responsible for "meeting all requirements under the California ESA and the federal ESA" it lacks a statement of the initiating actions and timing of consultation with the wildlife agencies that would be needed to fulfill the applicant's permit requirements...The Policy and Guidelines should be revised to clearly state how take of listed species will be prevented, and to identify triggers and process for initiation of all appropriate wildlife consultations. Just as the State cannot afford to allow impacts to Waters of the United States under this Policy, nor can it afford to allow take of listed species. The Policy and General Order should explicitly establish methods to prevent take of listed species and establish a consultation mechanism for any projects possibly impacting them. Additional procedures should be required to prevent take, including a defined consultation process with USFWS and NMFS.**

**END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy pertains specifically to the State Water Board's authority and is not intended to be an all-encompassing document containing information regarding all potentially applicable regulatory requirements. Specifying how to comply with existing state and federal laws protecting endangered and other Special-Status Species is beyond the scope of the Cannabis Policy. As stated in the Policy, where cannabis cultivation would result in a "take" of a protected species, the cannabis cultivator is responsible for working with the applicable agencies to discern what type of authorization is required and obtaining that authorization. Cannabis cultivators are not unique in being subject to these laws of general applicability; other industries and individuals also bear responsibility for working with responsible state and federal fish and wildlife agencies to discern how to comply with the law and avoid a take of protected species. Such compliance often relies on site-specific factors and analyses, so including guidelines for compliance with these laws in the Policy likely would be of little utility for cannabis cultivators. Cannabis cultivators unsure of how to comply with laws protecting endangered or Special-Status Species should consult with the California Department of Fish and Wildlife.*

*The State Water Board is not aware of any actual or potential conflicts between California and federal law that would preclude a cannabis cultivator from complying with both. Any such conflicts will be resolved as they materialize on a case-by-case basis.*

*Pursuant to Water Code section 13149(b), the adoption of the Policy is exempt from CEQA. However, discretionary approvals that local public agencies such as counties may require for cannabis operations may trigger the need for project-specific CEQA compliance.*

*END*

*Cannabis documents referenced:*

#### 050.006

Comment text: Protection of endangered and threatened species: The policy as presented (General Requirement 4) describes the applicant's responsibility in regards to special status species plants and wildlife under state and federal law but lacks guidelines that present steps that would initiate consultation with NMFS, USFWS and CDFW. While it does make the cultivator responsible for "meeting all requirements under the California ESA and the federal ESA" it lacks a statement of the initiating actions and timing of consultation with the wildlife agencies that would be needed to fulfill the applicant's permit requirements...The Policy and Guidelines should be revised to clearly state how take of listed species will be prevented, and to identify triggers and process for initiation of all appropriate wildlife consultations. Just as the State cannot afford to allow impacts to Waters of the United States under this Policy, nor can it afford to allow take of listed species. END

#### 050.011

Comment text: General Requirement 4 proposes to protect all listed species of plants and animals (State and Federal) and requires the cannabis cultivator to meet all requirements under the California ESA and the federal ESA. As discussed above, the language of this requirement does not provide triggers to show how consultation with NMFS or USFWS will be initiated for activities that do not require CWA Section 404/401 permits or even CEQA. The text should be revised to clearly describe the procedures that will be used to initiate consultations with NMFS and/or USFWS for all activities with the possibility to cause take of a federally listed species. Further, CEQA should be required for cultivation projects that have the potential to cause take of a state listed species. END

#### CQ-04

**Summary comment: The Guidelines should be revised to clearly prohibit coverage for activities that would be considered significant and unavoidable impacts, "result in the potential direct or indirect take of any listed species" and expose people to potential flooding, landslides or soil erosion. END**

*Summary response: As currently written, the Policy requires compliance with applicable state, local, and federal laws, regulations, and permitting requirements regarding protected species and other cannabis cultivation activities (e.g. land development or alteration). The requirements of the Policy have been designed specifically to prevent significant and unavoidable impacts. Layering a general prohibition of significant and unavoidable impacts on top of those requirements would not strengthen the Policy because cannabis cultivators would not know what, specifically, they need to do in order to prevent such impacts. END*

*Cannabis documents referenced:*

#### 050.025

Comment text: The Guidelines should be revised to clearly prohibit coverage for activities that would be considered significant and unavoidable impacts, "result in the potential direct or indirect take of any listed species" and expose people to potential flooding, landslides or soil erosion. END

#### CQ-09

**Summary comment: The Cannabis General Water Quality Certification should clarify that activities requiring water quality certification also require CEQA review. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: Some activities requiring a water quality certification may require a subsequent CEQA evaluation, but not necessarily all such activities. If a cultivator is issued a Section 404 permit and applies for a Section 401 Water Quality Certification, the discretionary action may trigger a CEQA evaluation. If the cultivator cannot obtain a Section 404 permit, and therefore cannot obtain a Section 401 permit, the cultivator will apply to the Regional Water Board for site-specific WDRs or coverage under the general water quality certification contained in the Cannabis Policy and General Order. If a site-specific WDR is issued, the discretionary action by the Regional Water Board may trigger the CEQA requirement. If the activities are covered by the general water quality certification contained in the Cannabis Policy and General Order, the action is ministerial and does not trigger a CEQA evaluation. Obtaining required permits (e.g., grading permits, lake and streambed alteration permits, timber harvest plans, etc.) may trigger the need for a CEQA evaluation as well.*

*If the cultivator is covered by the general water quality certification in the Cannabis Policy and General Order, the documents contain requirements for the protection of cultural and biological resources.*  
**END**

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*Cannabis documents referenced: Policy & Order Att A Sec.1, Cannabis General WQC item 7*

#### **050.015**

Comment text: Cannabis General Water Quality Certification.

Furthermore , this term (Term No. 3) should clarify that activities requiring water quality certification also require CEQA review, **END**

#### **CQ-10**

**Summary comment: The Cannabis Staff Report should clarify that work associated with access roads for cannabis cultivation is not covered by the 404(f) exemptions from federal regulation, and is subject to CWA Section 404/401 permits. END**

*Summary response: Depending upon the specifics of the situation, the Section 404(f) exemptions might apply in some cases. However, those activities remain subject to the timber harvest regulation at the Regional Water Boards as well as CAL FIRE, and the CDFW as appropriate.*

*Because cannabis cultivation is illegal under federal law, depending upon the specifics of the situation, the Army Corps may not issue a Section 404 permit. If the cultivator cannot obtain a Section 404 permit, and therefore cannot obtain a Section 401 certification, the cultivator will apply to the Regional Water Board for site specific WDRs or a determination that the activity may be covered under the Cannabis General Order.*

*The Cannabis Policy and General Order require that cannabis cultivators must obtain all required permits and approvals prior to the construction of any road constructed for cannabis cultivation activities. Permits may include section 404/401 CWA permits, Regional Water Board WDRs (when applicable), CDFW LSA Agreement, and county or local agency permits.*

**END**

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*Cannabis documents referenced: Policy & Order Att A, Sec 2, Requirements 16; Staff Report, Background and Rationale, pg 33-34*

#### **050.019**

Comment text: Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation. Private Road/Land Development.

Term 16 requires cultivators to obtain all required permits and approvals prior to the construction of any road constructed for cannabis cultivation activities. Permits may include section 404/401 CWA permits, Regional Water Board WDRs (when applicable), CDFW LSA Agreement, and county or local agency permits. Please add text to this term to clarify that roads constructed for cannabis cultivation activities are not covered by the CWA Section 404(f) exemption for road and forest roads.

**END**

#### **050.023**

Comment text: We ask for a tightening of the language to clarify that work associated with access roads for cannabis cultivation is not covered by the 404(f) exemptions from federal regulation, and is subject to CWA Section 404/401 permits. **END**

### **Definitions (DE)**

#### **DE-01**

**Summary comment: The term "Certification" should be clarified crisply mean "CWA Section 401 Water Quality Certification" and should be defined as such in the Acronyms and Abbreviations section. END**

*Summary response: The draft Policy will be amended to clarify that the Cannabis General Water Quality Certification is a certification under section 401 of the Clean Water Act. The Cannabis General Order serves as waste discharge requirements for cannabis-cultivation discharges of dredge and fill materials. Cannabis cultivators enrolled in and conducting activities in compliance with the Cannabis General Order will not be required to obtain coverage for such activities under Water Quality Order No. 2004-0004-DWQ (Statewide General Waste Discharge Requirements for Dredged or Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction), Water Quality Order No. 2003-0017-DWQ (Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that Have Received State Water Quality Certification), or any successor order. Cannabis cultivators that require a section 401 water quality certification may either seek coverage under the Cannabis General Water Quality Certification or apply to the State Water Board or applicable Regional Water Board for a site-specific water quality certification. **END***

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

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Cannabis documents referenced: Policy & General Order Att A Section 1 Cannabis General Water Quality Certification; Att A Section 1 Gen Req & Prohib 1,19; Staff Report, pg 33-35; General Order Finding 5, 6a, 11,

#### 050.003

Comment text: Certification : To avoid confusion and misinterpretation, the term "Certification" should unambiguously and crisply mean "CWA Section 401 Water Quality Certification" and should be defined as such in the Acronyms and Abbreviations section. END

#### DE-08

**Summary comment: The definition of land disturbance includes "all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access," but it is not always clear whether land disturbance for road construction is counted in the acreage totals for Total Disturbed Area.**

**END**

Summary response: The definition of land disturbance has been updated in the Cannabis Policy and General Order to clarify that access roads that are designed, constructed, and maintained, or are updated consistent with the Handbook for Forest, Ranch, and Rural Roads (Road Handbook), and that implement the interim and long term erosion prevention and soil stabilization measures contained in Attachment A, are not considered disturbed areas for the purpose of tier determination under the Cannabis General Order. Excluding access roads that are designed, constructed, and maintained, or updated consistent with the Road Handbook incentivizes BPTC measures and improves protection of water quality. END

Cannabis documents referenced: General Order Finding 8a; Policy & General Order Att A, Section 5, Disturbed Area Stabilization Plan; Staff Report, General WQ Certification, Dredge or Fill Materials, pg 34.

#### 050.002

Comment text: Roads and Total Disturbed Area: In the Policy, Total Disturbed Acres are used to determine the appropriate tier for a cultivation operation. However Definition 11, Attachment A states that land disturbance includes "all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access." Does that include land disturbed during the construction of access roads and other infrastructure? Does it include land disturbed as incursion in a riparian corridor? It should and Definition 11 should say so. END

### Enforcement (EN)

#### EN-04

**Summary comment: General Requirement 31 asks for self-certification of compliance. This is of great concern to us because it does not provide a way to verify that cultivators are correctly following the Guidelines. If construction projects are exempt from CEQA and CWA Section 404(f), it will be impossible to determine whether or not the cultivator performed work in stream channels without obtaining necessary CWA 404/401 permits or CDFW Lake and Stream Alteration Agreements. If permit oversight through existing Water Board enforcement processes are not mentioned but are considered adequate, please describe how they will work with this Policy. (50.013) END**

Summary response: If we could forecast every possible cannabis cultivator scenario, the Cannabis Policy and General Order could be made much more specific. However, the documents address activities that will occur state-wide so a high level of specificity is impossible. The Cannabis Policy and General Order require cannabis cultivators to self-certify that their activities are, or will be by the onset of the winter period each year, compliant with the requirements. Larger cultivation activities that are classified as Tier 1 or 2 are required to submit annual monitoring reports. If there are cannabis cultivators that do not comply with the requirements of the Cannabis Policy and General Order they will be subject to enforcement activities from the Water Boards. Those enforcement activities may include orders for technical reports, revised and/or additional monitoring requirements, cleanup and abatement orders, cease and desist orders, administrative civil liabilities (fines), and a number of other enforcement alternatives, including terminating authorization to cultivate cannabis and a remedial order. The California Water Code provides ample authority for the Water Boards to address non-compliant cannabis cultivators. END

Cannabis documents referenced: CCP, Enforcement pg. 19-23

#### 050.013

Comment text: General Requirement 31 asks for self-certification of compliance. This is of great concern to us because it does not provide a way to verify that cultivators are correctly following the Guidelines. Many of the issues we brought up previously in this letter address ambiguities related to needed permits and triggers to initiation of consultation with government agencies. If construction projects are exempt from CEQA and CWA Section 404(f), it will be impossible to determine whether or not the cultivator performed work in stream channels without obtaining necessary CWA 404/401 permits or CDFW Lake and Stream Alteration Agreements. If permit oversight through existing Water Board enforcement processes are not mentioned but are considered adequate, please describe how they will work with this Policy. END

### Monitoring, reporting (MR)

#### MR-04

**Summary comment: The Cannabis Policy and Cannabis General Order should include requirements to**

- use a licensed arborist when evaluating trees or conducting tree work;**
- include mention of a C-57 licensed well driller for installation of wells**
- include general engineering contractor's A license and the American Institute of Hydrology license for professional hydrologist**
- require that stream crossing and culvert designs be prepared by experienced fluvial geomorphologists END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: Attachment A has been revised to clarify contractor requirements. In California, anyone who contracts to perform work that is valued at \$500 or more in combined labor and material costs must hold a current, valid license from the California Contractors' State License Board. Licensed contractors are classified as general engineering, general building, or specialty contractors.*

*•General engineering ("A" contractors) principally work with fixed works that require specialized engineering knowledge and skill. A general engineering contractor may perform the work or hire specialty contractors for specific tasks.*

*•General building ("B" contractors) work on existing or new structures that require at least two unrelated types of work. In some cases a general building contractor can perform the work, but often must hire subcontractors with specialty licenses.*

*•Specialty contractors ("C" contractors) are those who specialize in a particular skill or trade. Specialty or subcontractors usually are hired to perform a single task.*

*Because there is significant overlap between specialty contractor skills, more than one specialty contractor may be licensed to contract for a project.*

*Arborists and well drillers are specialty contractors and are subject to the state contracting laws. A general engineering "A" contractor's license has been added to the definitions. Professional hydrologist and fluvial geomorphologists are not recognized license types under the California Business and Professions code. However, a licensed civil engineer or professional geologist may have the American Institute of Hydrology endorsement and may demonstrate additional expertise related to the endorsement. END*

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*Cannabis documents referenced: Att A: Overview, pg 5, Item 15; Policy: Att B, pg 8, par 2; Staff rpt: App 3, pg 8, par 2*

#### 050.018

*Comment text: Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation. Limitations on Earthmoving.*

*Term 5 asks for road construction to be designed by a "qualified professional" and suggests that cultivators "shall conduct all road design, land development, and construction activities in compliance with the California Forest Practices Act and any state, county, city, or local requirements, as applicable".*

*State Water Board or Regional Water Board staff always review and comment on designs for creek crossings before they are constructed, and their review should be considered applicable. LSA is also applicable for creek crossings. This Term should be tightened to require review of designs of creek crossings by State Water Board or Regional Water Board staff. In addition, the proper design of a stable culvert that will not trigger erosion, headcuts or scour pools requires design by an experienced, professional fluvial geomorphologist. Please revise Term 15 to require that stream crossing and culvert designs must be prepared by experienced fluvial geomorphologists, and reviewed by State Water Board or Regional Water Board staff and By CDFW. END*

#### MR-12

***Summary comment: All requests for a water quality certification for new culverts or bridges should require review and approval by State Water Board or Regional Water Board staff before stream crossings are constructed. END***

*Summary response: The Cannabis Policy and Cannabis General Order include a requirement that a cannabis cultivator seeking water quality certification coverage cannot commence work until the cultivator is provided written authorization by the appropriate Executive Officer of the Regional Water Board or Executive Director of the State Water Board, and note that the Executive Officer or Executive Director may include specific monitoring requirements to ensure applicable state water quality standards are met. Additionally, projects that do not meet the criteria for coverage under the Cannabis General Water Quality Certification are required to apply for individual WDRs. END*

*Cannabis documents referenced: Att A: pg 17, Item 4; Staff rpt: pg 34, par 3; Order: pg 2, F6.a*

#### 050.024

*Comment text: Page 34 also includes additional discussion of how Cannabis General Order provides exemptions from several Water Quality Orders (2004-0004-DWQ, 2003-0017-DWQ and any or any successor order). It states, "Cannabis cultivators that require a section 401 water quality certification may either seek coverage under the Cannabis General Water Quality Certification or apply to the State Water Board or applicable Regional Water Board for a site-specific water quality certification". We are greatly concerned because the proposed Cannabis General Water Quality Certification appears to require less extensive review of project designs than is required for projects that obtain individual water quality certifications from the Regional Water Boards. Impacts to streams associated with new bridges or culverts for access roads can significantly destabilize creeks, resulting in erosion, headcutting, bank failures, and the creation of barriers to fish passage and wildlife movement. In order to protect the geomorphic integrity and habitat value of streams, all requests for Certification for new culverts or bridges should require review and approval by State Water Board or Regional Water Board staff, before the stream crossings are constructed. END*

#### Regulatory structure (RS)

##### RS-11

***Summary comment: "If the CWA permit cannot be obtained, the cannabis cultivator shall contact the appropriate Regional Water Board or State Water Board prior to commencing any cultivation activities. The Regional Water Board or State Water Board will determine if the cannabis cultivation activity and discharge is covered by the Requirements in the Policy..." This is in contradiction to federal laws. Statement in Policy shall be clear specific to 401 and 404 permits. Disambiguate requirements/authorities of the federal Clean Water Act from those of the state Cannabis Policy from those of the Regional Boards so that both growers and regulators can better understand which rules apply. In fact, the policy asserts, "The Cannabis Cultivator shall comply with all federal ...regulations." Federal law makes Cannabis cultivation illegal - why include impossible statements? (21.022, 50.004, 50.009, and 69.001) END***

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: Compliance with applicable laws, regulations, and permitting requirements is an appropriate and common term in regulatory programs and policies. Because cannabis remains illegal under federal law a cultivator may not be able to obtain a Section 404 permit from the Army Corps. In cases where the cultivator can obtain the Section 404 permit, they are required to and must also obtain a Section 401 water quality certification. If the general water quality certification is used, the applicant must submit an application at least 60 days prior to starting work, and obtain written authorization from the Executive Officer. In cases where the cultivator cannot obtain the Section 404 permit, they cannot obtain a Section 401 water quality certification. Those cultivators are required to obtain coverage from the Regional Water Board. The Regional Water Board may elect to prepare site-specific waste discharge requirements (WDRs), if appropriate. END*

*Cannabis documents referenced:*

#### 050.004

Comment text: Federal CWA Permits: In Section 1 – General Requirements and Prohibitions, General Requirement 1 the Policy states that the State Water Board or Regional Water Board may allow impacts to waters of the U.S.2, even if a federal agency has not granted a permit for impacts to federal waters. We believe that Water Quality Control Board (State and/or regional) should not allow a Cannabis Cultivation project to impact any waters of the U.S unless the Army Corps of Engineers (ACE) permits it. Moreover, we believe that the Water Board does not have legal authority to allow an impact to a water of the U.S. in cases where ACE has not issued a permit for that impact. We are aware that federal law does not recognize legal cannabis cultivation. Nonetheless, we maintain that the State cannot provide approval to cannabis cultivation projects if that approval violates the Clean Water Act nor do we find it tolerable that a State policy suggests it is possible. The statements in the Draft Policy and Staff Report must be crystal clear on this issue. END

#### 050.009

Comment text: General Requirement 1 provides, "If the CWA permit cannot be obtained, the cannabis cultivator shall contact the appropriate Regional Water Board or State Water Board prior to commencing any cultivation activities". As stated in comment 3 above, we are extremely concerned with the implication that the State Water Board or a Regional Water Board may allow an impact to a water of the U.S., even if the Corps does not grant a permit for such impacts. The State should not provide cultivation projects with approval to violate the Clean Water Act. END

### Road building, land disturbance, slope stability (RB)

#### RB-07

**Summary comment: The Cannabis Policy and Cannabis General Order should be modified to prohibit the operation of vehicles or equipment within a riparian setback, and to clarify instead that the construction of access roads (including over culverts and bridges) that will be used by a vehicles or equipment does require a CWA section 404 permit, a CDFW LSA Agreement, or WDRs issued by the State Water Board or Regional Water Board. END**

*Summary response: Because cannabis remains illegal under federal law, a cultivator may not be able to obtain a Section 404 permit from the Army Corps. In cases where the cultivator can obtain the Section 404 permit, they are required to also obtain a Section 401 water quality certification. In cases where the cultivator cannot obtain the Section 404 permit, they cannot obtain a Section 401 water quality certification. Those cultivators are required to obtain coverage from the Regional Water Board. The Regional Water Board may elect to prepare site specific WDRs.*

*The Cannabis Policy and General Order require that prior to commencing any cannabis cultivation activities, including cannabis cultivation land development or alteration, the cannabis cultivator shall comply with all applicable federal, state, and local laws, regulations, and permitting requirements, as applicable, including but not limited to the following:*

- The Clean Water Act (CWA) as implemented through permits, enforcement orders, and self-implementing requirements. When needed per the requirements of the CWA, the cannabis cultivator shall obtain a CWA section 404 (33 U.S.C. § 1344) permit from the United States Army Corps of Engineers (Army Corps) and a CWA section 401 (33 U.S.C. § 1341) water quality certification from the State Water Board or the Regional Water Board with jurisdiction. If the CWA permit cannot be obtained, the cannabis cultivator shall contact the appropriate Regional Water Board or State Water Board prior to commencing any cultivation activities. The Regional Water Board or State Water Board will determine if the cannabis cultivation activity and discharge is covered by the Requirements in the Policy and Cannabis General Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order).*
- The California Water Code as implemented through applicable water quality control plans (often referred to as Basin Plans), waste discharge requirements (WDRs) or waivers of WDRs, enforcement orders, and self-implementing requirements issued by the State Water Resources Control Board (State Water Board) or Regional Water Quality Control Boards (Regional Water Boards).*
- All applicable state, city, county, or local regulations, ordinances, or license requirements including, but not limited to those for cannabis cultivation, grading, construction, and building.*
- All applicable requirements of the California Department of Fish and Wildlife (CDFW).*
- All applicable requirements of the California Department of Forestry and Fire Protection (CAL FIRE), including the Board of Forestry.*
- California Environmental Quality Act and the National Environmental Policy Act.*

*Cannabis documents referenced: Att A: Sec 1, pg 8, Item 1*

*END*

*Cannabis documents referenced: Att A: Sec 1, pg 8, Item 1*

#### 050.017

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation. Limitations on Earthmoving. Term 4 implies that CWA section 404 permit, CDFW LSA Agreement, or WDRs issued by the State Water Board or Regional Water Board are likely to authorize the operation of vehicles or equipment within a riparian setback. In fact, these permits usually prohibit “fuel, clean, maintain, repair, or store vehicles or equipment within the riparian setbacks or within waters of the state”. Term 4 should be modified to prohibit such activities, and to clarify instead that the construction of access roads (including over culverts and bridges) that will be used by a vehicles or equipment does require a CWA section 404 permit, a CDFW LSA Agreement, or WDRs issued by the State Water Board or Regional Water Board.  
END

#### Setbacks (SB)

##### MR-08

**Summary comment: The Disturbed Area Stabilization Plan does not include requirements to address restoration of the habitat function of the disturbed area (ecological, riparian, and/or wetland functions). END**

*Summary response: Attachment A includes requirements regarding revegetation plans. An appropriately revegetated and protected riparian setback area will provide habitat for the indigenous species to repopulate the area. END*

*Cannabis documents referenced: Att A: Sec 2, pg 25, Items 32-37*

##### 050.022

Comment text: Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation. Riparian and Wetland Protection and Management.

Term 65 states: “Cannabis cultivators shall maintain existing, naturally occurring, riparian vegetative cover (e.g., trees, shrubs, and grasses) in aquatic habitat areas to the maximum extent possible to maintain riparian areas for streambank stabilization, erosion control, stream shading and temperature control, sediment and chemical filtration, aquatic life support, wildlife support, and to minimize waste discharge.” (emphasis added) This language implies that it is potentially permissible to remove all trees, shrubs and grasses in riparian areas. It definitely does not provide adequate protection nor sufficiently constrain impacts to riparian vegetation and to endangered and threatened species. Please revise Term 65 to require the cultivator to detail what is “possible” and why, limit the percentage of on-site riparian vegetation that may be impacted for a cultivation project and require appropriate mitigation for impacts to riparian vegetation. END

##### SB-03

**Summary comment: General Requirement 29 provides, “In timberland areas, unless authorized by CAL FIRE or the Regional Water Board Executive Director, Cannabis cultivators shall not remove trees within 150 feet of fish bearing water bodies or 100 feet of aquatic habitat for non- fish aquatic species (e.g., aquatic insects). (Public Resources Code section 4526.)”. It is not clear whether this requirement applies to access roads – we believe that it should and should be stated in the Policy as such END**

*Summary response: Under General Requirement 30 (Requirement 29 in the draft Policy), no situation is exempt from the obtaining authorization prior to removal of trees within the defined distances. END*

*Cannabis documents referenced:*

##### 050.012

Comment text: General Requirement 29 provides, “In timberland areas, unless authorized by CAL FIRE or the Regional Water Board Executive Director, Cannabis cultivators shall not remove trees within 150 feet of fish bearing water bodies or 100 feet of aquatic habitat for non- fish aquatic species (e.g., aquatic insects). (Public Resources Code section 4526.)”. It is not clear whether this requirement applies to access roads – we believe that it should and should be stated in the Policy as such END

#### Stream crossing (SC)

##### SC-03

**Summary comment: The Cannabis Policy and Cannabis General Order should include clear guidance/clarification, or a specific list of activities, that require a water quality certification and Lake and Streambed Alteration Agreement. END**

*Summary response: Because the specifics of every situation cannot be forecasted, exhaustive lists are not practical. The Cannabis Policy and General Order require the cannabis cultivator to comply with all local, state, and federal laws. It is up to each cannabis cultivator to consult with the appropriate regulatory agency to determine what permits are necessary for their activities. END*

*Cannabis documents referenced: Att A: Overview, pg 3, par 1; Att A: Sec 1, pg 8, Item 1*

##### 050.001

Comment text: Clean Water Act (CWA) and California Department of Fish and Wildlife (CDFW) permits: Several times the Policy and the Guidelines state that there is a need for CWA 404/401 permits and CDFW permits for new fill... We ask for clear guidelines that state unequivocally that construction of new creek crossings and enhancements to existing creek crossings with fill must require permits under CWA Sections 404 and 401, and CDFW Lake and Streambed Alteration agreements. END

##### 050.014



## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: Cannabis General Water Quality Certification.

The language of Term No. 3 would be greatly improved by a list of activities in surface waters that will require water quality certification (for example, culverts at stream crossings, bents for bridges that are located within the stream channel, diversion structures) and that new stream crossings would require a CDFW Lake and Streambed Alteration Agreement. END

#### 050.016

Comment text: Cannabis General Water Quality Certification.

Furthermore, this term should clarify that ... new stream crossings would require a CDFW Lake and Streambed Alteration Agreement. END

#### SC-04

**Summary comment: In reference to item 3 in the General Requirements and Prohibitions section of Attachment A, the item should include a fourth bullet that covers stream crossings that include new culverts and bents within the channel. This will help reduce impacts to wildlife linkages and to aquatic and riparian species. END**

*Summary response: Item 3 in the General Requirements and Prohibitions section of Attachment A is a requirement from Fish and Game Code section 1602 and was taken from CDFW's Lake and Streambed Alteration Program web page. The activities described in the comment are already addressed by the existing language. END*

*Cannabis documents referenced: Att A: Sec 1, pg 9, Item 3; Order: pg 8, F26*

#### 050.010

Comment text: General Requirement 3 direct cultivators to consult with CDFW to determine if a Lake and Streambed Alteration Agreement (LSA Agreement) only for activities that may:

- divert or obstruct the natural flow of any river, stream, or lake;
- change or use any material from the bed, channel, or bank of any river, stream, or lake; or
- deposit debris, waste, or other materials that could pass into any river stream or lake.

We believe a fourth bullet is needed to cover stream crossings that include new culverts and bents within the channel. This will help reduce impacts to wildlife linkages and to aquatic and riparian species. END

#### SC-07

**Summary comment: Designs of creek crossings, culvert designs, and all new culverts and bridges over streams should be reviewed by State Water Board or Regional Water Board staff and should require the expertise of an experienced fluvial morphologist. END**

*Summary response: The Cannabis Policy and Cannabis General Order include a requirement that a cannabis cultivator seeking water quality certification coverage cannot commence work until the cultivator is provided authorization by the appropriate Executive Officer of the Regional Water Board or Executive Director of the State Water Board, and note that the Executive Officer or Executive Director may include specific monitoring requirements to ensure applicable state water quality standards are met. Additionally, projects that do not meet the criteria for coverage under the Cannabis General Water Quality Certification are required to apply for individual certification.*

*The design of civil engineering projects such as bridge or road design will be supervised by a licensed civil engineer. Fluvial geomorphologists is not a recognized license type under the California Business and Professions code. END*

*Cannabis documents referenced: Att A: pg 17, Item 4; Staff rpt: pg 34, par 3; Order: pg 2, F6.a*

#### 050.020

Comment text: Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation. Private Road/Land Development.

Term 17 directs cultivators to the Forest Practice Rules and the Road Handbook. Use of these rules for road construction is insufficient to ensure that a road crossing avoids and minimizes impacts to waters of the State to the maximum extent practicable. This is why State Water Board or Regional Water Board staff regularly reviews and comments on designs for creek crossings before they are constructed. As commented above (comment 11, Term 5), Please revise Term 17 to require review of designs of creek crossings by State Water Board or Regional Water Board staff, require that culvert designs be prepared by experienced fluvial geomorphologists, and direct cultivators to seek LSA from CDFW. END

#### 050.021

Comment text: Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation. Water Course Crossings.

Terms 54 and 57 provide design specifications for culverts and stream crossings. These specifications are incomplete. Proper design of culverts also requires that the culvert conform to the existing channel gradient and that the culvert minimize reductions in stream sinuosity. Again, the design of a stable culvert that will cause erosion or flooding, and will not trigger headcuts or scour pools requires design by an experienced fluvial geomorphologist. Please revise Terms 54 and 57 to require that culvert designs be prepared by experienced fluvial geomorphologists and that culvert designs be reviewed by State Board or Regional Water Board staff before they are constructed.  
END

#### 050.026

Comment text: Again, please provide more specific direction to require that all new culverts and bridges over streams be designed by experienced fluvial geomorphologists. END

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**Save Our Seashore**

**Application for coverage (AP)**

**AP-02**

**Summary comment: The slopes for each risk designation should be revised to something lower. END**

*Summary response: The commenter doesn't specify what criteria is recommended. The slope and erosion potential relationship are presented in the Cannabis Staff Report and best practicable treatment or control measures to prevent erosion are presented in Attachment A. The documents were revised to include: all moderate risk sites (disturbed area slope greater than 30 percent) are required to include a slope stability evaluation as part of the Site Erosion Sediment Control Plan. The Cannabis General Order and the Cannabis Policy require a qualified professional to inspect slopes for indications of instability prior to the cultivator engaging in cultivation or land disturbance activities. The Cannabis General Order and the Cannabis Policy also require that if there is an indication of instability, the cultivator shall consult with a qualified professional to design measures to stabilize the slope and prevent sediment discharges to surface waters, and does not allow cultivation or land disturbance activities to take place until the Site Erosion Sediment Control Plan and/or the Disturbed Area Stabilization Pan are approved by the Regional Water Board Executive Officer. Based on the slope stability analysis, technical report preparation, and implementation, and monitoring required of Tier 1 and Tier 2 sites, a lower slope requirement is not needed. A change was made to require a mandatory slope stability assessment for moderate risk cultivation sites. END*

*Cannabis documents referenced: Policy: pg 14, Tbl 1; Policy: pg 15, par 2; Policy: pg 16, Item c; Att A: Sec 1, pg 14, Item 30; Att A: Sec 1, pg 15, Item 32; Att A: Sec 2, pg 19, Item 2; Att A: Sec 2, pg 39, Item 130; Att A: Sec 5, pg 68, par 3; Staff rpt: pg 38; Order: pg 4, F10; Order: pg 5, F12-13; Order: pg 13, F41.f*

**021.008**

Comment text: The 30% break between Low and Moderate Risk may have been useful as short-term triage for illegal grows, but it inappropriate and dangerous for a formal Policy (either interim or long-term) given that California has some of the most highly erodible soils found anywhere on earth. USDA data1 shows that for certain soils, significant erosion could occur on less-than-5% slopes.

Thus Save Our Seashore believes that the slope break points now in that now categorize Risk Areas should be substantially revised downward, with each Regional Board setting standards appropriate for local soil types. Following the Region 22 pattern, this would result in: • Low Risk Areas defined as slopes from 0% to 5% • Moderate Risk Areas defined as slopes over 5% to 30% and •High Risk Areas defined as slopes over 30%.

Further, the Documents do not specify performance standards for to judge the effectiveness of either the Site Management Plan or the Erosion Control Plan (see Concern #3). Also, Attachment A, pg. 19 # 2 appears to say that regulators can deny a grading request for cultivation purposes or roads only if they find that impacts cannot be eliminated. However, this appears to put the burden on regulators to demonstrate impacts when the burden should be on developers to demonstrate no impacts. This section should make clear that the burden is on developers to demonstrate in their application that there will be no impacts from their proposal. END

**AP-03**

**Summary comment: Roads and other permanent or temporary projects that are exempt in the Cannabis General Order and Cannabis Policy but that would need a Clean Water Act section 401 or section 404 permit, or a Lake and Streambed Alteration agreement, should be included as part of the total disturbed area calculation. END**

*Summary response: The Cannabis Policy exempts new and/or existing roads that were built and maintained in accordance with the Road Handbook from the total disturbed area calculation. The Cannabis Policy also requires implementation of BPTC measures for maintenance of existing roads and associated storm drainage features. Activities authorized under a CDFW Lake or Stream Alteration Agreement or under a water quality certification, and built in accordance with the Road Handbook and Forest Practice Rules, are exempt from the total disturbed area calculation because these applicants are already required to implement standards to reduce sediment discharges to surface waters. END*

*Cannabis documents referenced: Land Disturbance Definition: Policy: Att B, pg 6, par 1; Staff rpt App 3, pg 6, par 1*

*WQ Cert/LSA exempt from disturbed area total: Policy: pg 13, par 10; Policy: pg 17, par 2; Att A: Sec 5, pg 70, par 3; Staff rpt: pg 33, par 4; Staff rpt: pg 34, par 1; Staff rpt: pg 72, par 3; Order: pg 4, F11; Order: pg 13, F41.f.iii; Order: pg 17, Table 2, fn 5; Order: pg 18, Item C.1.c; Order: Att D, pg D-9, par 3*

*Forest Practice Rules: Att A: Sec 5, pg 70, par 4; Staff rpt: pg 37, par 2*

*BPTC: Att A: Sec 2, pg 20, Item 5; Att A: Sec 2, pg 22, Items 16-29; Att A: Sec 2, pg 28, Items 50-51, 55, 56; Staff rpt: pg 37, par 1*

**021.013**

Comment text: The Cannabis Documents do not make clear that roads are part of the "Total Disturbed Area" that will be used to determine the regulatory tier nor is it clear that any road in a riparian setback will trigger a High Risk categorization.

For example, Policy pg 17 (emphasis ours) appears to define the "High Risk" category as any riparian incursion but "with the exception of activities authorized by CDFW with a Lake or Streambed Alteration Agreement or under a Clean Water Act section 401/section 404 permit."

A piece of paper documenting a permit will not prevent these riparian incursions from continuing to impact water runoff and creek hydrology. Thus the definition of high risk sites should be clarified to state that sites with any riparian incursion will be treated as high risk sites. END

**021.016**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: The Order identifies setbacks (Attachment A, pg 16, #36) that appear to be protective. However, the Documents are also highly fragmented and appear to contain so many confusions, exceptions, and inadequate mitigations, that in sum they appear to be less protective than the current "no net loss" regulatory structure. For example, "High Risk" sites are required to develop a Disturbed Area Stabilization Plan (DAS Plan) (Order, Attach A, pg. 16, Term, #36.) Yet confusingly and inconsistently, roads are defined as exempt from Disturbed Area considerations.

Further, the need for DAS Plan approved by the Regional Water Board Executive Officer (Appendix D, DAS plan) appears to only be required if a compliance cannot be done by November 15th.

A similar confusing situation occurs when the Order (pg 13) states: "High Risk- Are facilities that have any portion of their disturbed area located within the setback requirements, with the exception of activities authorized by CDFW with a Lake or Streambed Alteration Agreement or Clean Water Act section 404 permits, are classified as high risk and will be assessed the high- risk fee until the activities comply with the setback requirements. It is the Discharger's responsibility to notify the Regional Water Board of compliance with the setback requirements to reassess the annual fee."

Yet confusingly and inconsistently, the Order (Attach A, pg 16, #36) also appears to allow impacts to these protected areas: "Variance to riparian setbacks is only allowed if consistent with this Policy and a work plan and compliance schedule are approved by the applicable Regional Water Board Executive Officer."

END

#### CEQA, permits (CQ)

##### CQ-01

**Summary comment: While this draft, when amended, could qualify covered cannabis activities for a CEQA exemption, this draft must also make clear that irrespective of this Cannabis Policy, any action with the potential to impact state waters or state-listed endangered species will trigger CEQA. END**

*Summary response: CEQA applies only to discretionary approvals of "projects" by state or local government agencies. Thus, actions by private individuals and actions by state or local agencies that are not discretionary approval of "projects" do not trigger CEQA. Therefore, the commenter's suggested addition would be an incorrect statement of the scope of the law.*

*As stated in the Policy, Water Code section 13149, subdivision (b)(1), provides that the Policy shall qualify for a categorical exemption, and that the exception to categorical exemptions when activities may nonetheless have a significant impact on the environment shall not apply. ("Notwithstanding Section 15300.2 of Title 14 of the California Code of Regulations, actions of the board ... under this section shall be deemed to be within Section 15308 ..., provided that those actions do not involve relaxation of existing streamflow standards.") In effect, this statutory exemption precludes the State Water Board from applying CEQA to the Policy so long as the Policy does not reduce allowable instream flows. This statutory exemption was enacted by the California Legislature and therefore is beyond the State Water Board's legal authority to change. END*

*Cannabis documents referenced:*

##### 021.003

Comment text: While this draft, when amended, could qualify covered cannabis activities for a CEQA exemption, this draft must also make clear that irrespective of this Cannabis Policy, any action with the potential to impact state waters or state-listed endangered species will trigger CEQA. END

##### CQ-02

**Summary comment: The 7/7/17 Public Notice states (emphasis ours): "On June 27, 2016, the Governor signed Senate Bill 8371, which among other things, codified Water Code section 13149 and authorizes the State Water Board to adopt principles and guidelines (requirements) for cannabis cultivation as part of a state policy for water quality control."**

**Thus Save Our Seashore believes that "existing" as used in the Policy, General Order and Staff Report necessarily refers to conditions and operations existing on June 27, 2016 and any cannabis related condition (e.g. road, grading, water withdrawal, etc.) commencing after June 27, 2016 should be considered as "new" rather than as "existing."**

**Conversely, to set a date later than June 27, 2016, would have set off a "land rush" to establish inappropriate projects that would qualify as "existing" when they should be considered as "new." Thus to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, this Policy should set June 27, 2016 as the date past which projects shall be considered "new."**

END

*Summary response: The draft Policy does not impose different requirements based on whether cannabis cultivation activities occurred before rather than after the July 7, 2017 public notice. Once the Policy has been adopted, its requirements will apply to all cannabis cultivation activities occurring within the state. Based on comments received from stakeholders and sister agencies, the State Water Board has revised the Policy to allow cannabis cultivation activities with existing regulatory coverage under the North Coast Regional Water Board's or the Central Valley Regional Water Board's general order imposing waste discharge requirements to continue operating under that order until July 1, 2019, one year longer than originally proposed in the draft Policy and General Order.*

*For the purposes of CEQA compliance, the approval at issue is the State Water Board's adoption of the Policy – not the Governor signing Senate Bill 837 into law. Application of the "seen with certainty" exemption necessarily references the impact of that State Water Board approval. The Policy does not incentivize cannabis cultivation activities beginning between the effective date of Senate Bill 837 and adoption of the Policy because, with the exception of cultivation with pre-existing coverage under either the North Coast Regional Water Board General Order or Central Valley Regional Water Board General Order, the requirements of the Policy are the same regardless of when cultivation began.*

END

*Cannabis documents referenced:*

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

#### 021.004

Comment text: The 7/7/17 Public Notice states (emphasis ours):" On June 27, 2016, the Governor signed Senate Bill 8371, which among other things, codified Water Code section 13149 and authorizes the State Water Board to adopt principles and guidelines (requirements) for cannabis cultivation as part of a state policy for water quality control."  
Thus Save Our Seashore believes that "existing" as used in the Policy, General Order and Staff Report necessarily refers to conditions and operations existing on June 27, 2016 and any cannabis related condition (e.g. road, grading, water withdrawal, etc.) commencing after June 27, 2016 should be considered as "new" rather than as "existing."  
Conversely, to set a date later than June 27, 2016, would have set off a "land rush" to establish inappropriate projects that would qualify as "existing" when they should be considered as "new."  
Thus to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, this Policy should set June 27, 2016 as the date past which projects shall be considered "new." END

#### CQ-03

**Summary comment: Protection of endangered and threatened species: The policy as presented (General Requirement 4) describes the applicant's responsibility in regards to special status species plants and wildlife under state and federal law but lacks guidelines that present steps that would initiate consultation with NMFS, USFWS and CDFW. While it does make the cultivator responsible for "meeting all requirements under the California ESA and the federal ESA" it lacks a statement of the initiating actions and timing of consultation with the wildlife agencies that would be needed to fulfill the applicant's permit requirements...The Policy and Guidelines should be revised to clearly state how take of listed species will be prevented, and to identify triggers and process for initiation of all appropriate wildlife consultations. Just as the State cannot afford to allow impacts to Waters of the United States under this Policy, nor can it afford to allow take of listed species. The Policy and General Order should explicitly establish methods to prevent take of listed species and establish a consultation mechanism for any projects possibly impacting them. Additional procedures should be required to prevent take, including a defined consultation process with USFWS and NMFS.**

**END**

*Summary response: The Cannabis Policy pertains specifically to the State Water Board's authority and is not intended to be an all-encompassing document containing information regarding all potentially applicable regulatory requirements. Specifying how to comply with existing state and federal laws protecting endangered and other Special-Status Species is beyond the scope of the Cannabis Policy. As stated in the Policy, where cannabis cultivation would result in a "take" of a protected species, the cannabis cultivator is responsible for working with the applicable agencies to discern what type of authorization is required and obtaining that authorization. Cannabis cultivators are not unique in being subject to these laws of general applicability; other industries and individuals also bear responsibility for working with responsible state and federal fish and wildlife agencies to discern how to comply with the law and avoid a take of protected species. Such compliance often relies on site-specific factors and analyses, so including guidelines for compliance with these laws in the Policy likely would be of little utility for cannabis cultivators. Cannabis cultivators unsure of how to comply with laws protecting endangered or Special-Status Species should consult with the California Department of Fish and Wildlife.*

*The State Water Board is not aware of any actual or potential conflicts between California and federal law that would preclude a cannabis cultivator from complying with both. Any such conflicts will be resolved as they materialize on a case-by-case basis.*

*Pursuant to Water Code section 13149(b), the adoption of the Policy is exempt from CEQA. However, discretionary approvals that local public agencies such as counties may require for cannabis operations may trigger the need for project-specific CEQA compliance.*

**END**

*Cannabis documents referenced:*

#### 021.021

Comment text: In order to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, the Cannabis Policy should clear up the confusions, inconsistencies and slightly altered wordings in the Policy. Because cannabis cultivation is legal under California law, but remains prohibited under federal law, these Cannabis Documents do not (and possibly cannot) make clear how either the grower or the regulator can navigate through these contradictory laws. Attachment A pg 9 makes clear that: "Cannabis cultivators shall not take any action which results in the taking of Special-Status Plants... or a threatened, endangered, or candidate species...If a "take"...may result from any act authorized under this Policy, the cannabis cultivator must obtain authorization from CDFW, National Marine Fisheries Service, and United States Fish and Wildlife Service, as applicable, to incidentally take such species prior to land disturbance or operation associated with the cannabis cultivation activities. The cannabis cultivator is responsible for meeting all requirements under the California ESA and the federal ESA." However, the specific process that the grower has to follow for "meeting all requirements" of the federal ESA authorities (NMFS and USFWS) is not described in the policy. In some cases (e.g. when a proposal requires a Clean Water Act Section 404 permit), there is an automatic trigger for a "Section 7" consultation with NMFS and USFWS. However, many proposals that could impact ESA species may not require a Section 404 Permit (e.g. new stream crossings that do not require fill below Ordinary High Water or new cultivation fields that do not impact waters under federal jurisdiction). These cases would require a much more exhaustive "Section 10" consultation with NMFS and USFWS, including a Habitat Conservation Plan. But the Cannabis Documents do not make clear how the grower can initiate a Section 10 consultation if an incidental take is unavoidable. In order to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, the Cannabis Policy should state clearly how take of federally listed species will be prevented, and if a project has potential to impact such species, then how federal consultation will be initiated. In order to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, these Documents should disambiguate requirements/authorities of the federal Clean Water Act from those of the state Cannabis Policy from those of the Regional Boards.

END

**xDELETED**

# Cannabis Cultivation Policy and General Order Response to Public Comments

## COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

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### Summary comment: Deleted comment END

Summary response: Deleted comment END

Cannabis documents referenced: Deleted comment

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021.011

Comment text: Comment deleted - combined with comments 21.8 and 21.9. END

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## Definitions (DE)

### DE-01

**Summary comment: The term "Certification" should be clarified crisply mean "CWA Section 401 Water Quality Certification" and should be defined as such in the Acronyms and Abbreviations section. END**

Summary response: The draft Policy will be amended to clarify that the Cannabis General Water Quality Certification is a certification under section 401 of the Clean Water Act. The Cannabis General Order serves as waste discharge requirements for cannabis-cultivation discharges of dredge and fill materials. Cannabis cultivators enrolled in and conducting activities in compliance with the Cannabis General Order will not be required to obtain coverage for such activities under Water Quality Order No. 2004-0004-DWQ (Statewide General Waste Discharge Requirements for Dredged or Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction), Water Quality Order No. 2003-0017-DWQ (Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that Have Received State Water Quality Certification), or any successor order. Cannabis cultivators that require a section 401 water quality certification may either seek coverage under the Cannabis General Water Quality Certification or apply to the State Water Board or applicable Regional Water Board for a site-specific water quality certification. END

Cannabis documents referenced: Policy & General Order Att A Section 1 Cannabis General Water Quality Certification; Att A Section 1 Gen Req & Prohib 1,19; Staff Report, pg 33-35; General Order Finding 5, 6a, 11,

021.022

Comment text: we understand the technical term "certification" relates solely to the federal "Clean Water Act Water Quality Certification," however the same terminology is used for the state "Cannabis General Water Quality Certification." It would seem helpful to disambiguate these two uses so that both growers and regulators can better understand which rules apply. Attachment A page 8 states; "If the CWA permit cannot be obtained, the cannabis cultivator shall contact the appropriate Regional Water Board or State Water Board prior to commencing any cultivation activities. The Regional Water Board or State Water Board will determine if the cannabis cultivation activity and discharge is covered by the Requirements in the Policy..." We do not believe that the intent of the Cannabis Policy is to re-fight Appomattox and grant a state permit allowing impacts to waters under federal jurisdiction that the federal regulator itself did not grant a permit to allow. Similarly, we do not believe that the intent of the Cannabis Policy is to overturn the permitting authority of the Regional Water Boards. So it would seem helpful to disambiguate requirements/authorities of the federal Clean Water Act from those of the state Cannabis Policy from those of the Regional Boards so that both growers and regulators can better understand which rules apply. END

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### DE-05

**Summary comment: The list of "qualified professionals" in Attachment A pg 5 is too broad and include qualified professionals that may not be actually qualified to carry out certain requirements within the Cannabis Policy. END**

Summary response: Definition for "qualified professional" includes the statement that the qualified professional shall only perform work he/she is qualified to complete, consistent with applicable licensing and registration restrictions, and shall certify any work completed. For example, a land surveyor is unlikely be willing to certify a design for retaining walls or structures because it is outside his/her expertise. By doing so, he/she will be in violation of his/her licensing requirements and will be subject to licensing board actions. The list of professionals included in the Cannabis Policy and General Order are consistent with the California Business and Professions Code and the State Board adopted Construction Water Quality Order 2009-0009-DWQ and National Pollutant Discharge Elimination System No. CAS000002, as amended by Order No. 2010-0014-DWQ, Order No. 2012-0006-DWQ, END

Cannabis documents referenced: Policy & General Order Att A, Section 1 Definitions 15

021.009

Comment text: F or both the Site Management Plan and the Erosion Control Plan, the cultivator is required only to "consult with" a "qualified professional." But the list of "qualified professionals" (Attachment A pg 5) includes a Professional Land Surveyor and a Qualified Storm Water Pollution Prevention Plan (SWPPP) Practitioner, neither of whom is qualified and both of whom should be deleted. END

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### DE-06

**Summary comment: The Cannabis Policy requires winterization from November 15th to April 1, per the Forest Practices Rule, but that Rule includes special County Rules at 14 CCR, Article 13 § 925.1, 926.18, 927.1, and 965.5, which provide the following "extended wet weather" County adjustments: 925.1 (Santa Clara) Oct 15-Apr 15; 926.18 (Santa Cruz) Oct 15-Apr 15; 927.1 (Marin) Oct 1-Apr 15; 965.5 (Monterey) Oct 15-Apr 15. The Cannabis Policy should allow each Regional Board to set a "winterization" period appropriate for local conditions. END**

Summary response: The Cannabis Policy and General Order have been modified to clarify that the winter period may be earlier if needed to prevent waste discharges that result in water quality degradation. The earlier dates are imposed due to a county ordinance or a basin plan requirement. Clarification that the winter period may begin sooner than November 15th has been added to the Cannabis Policy and General Order. END

# Cannabis Cultivation Policy and General Order Response to Public Comments

## COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Cannabis documents referenced: Policy & General Order Att A Definitions no 29; Att A Section 1, General Req and Prohib 33; Section 2, Req 127

### 021.007

Comment text: The Documents require winterization from November 15th. to April 1, per the Forest Practices Rule1, but that Rule actually states (emphasis ours) "Winter Period means the period between November 15 to April 1, except as noted under special County Rules at 14 CCR, Article 13 § 925.1, 926.18, 927.1, and 965.5."

Those sections provide the following "extended wet weather" County adjustments: 925.1 (Santa Clara) Oct 15-Apr 15; 926.18 (Santa Cruz) Oct 15-Apr 15; 927.1 (Marin) Oct 1-Apr 15; 965.5 (Monterey) Oct 15-Apr 15.

Thus to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, this Cannabis Policy should allow each Regional Board to set a "winterization" period appropriate for local conditions.

END

## Flow requirements, narrative (FR)

### EN-10

**Summary comment: The draft Cannabis Policy does not provide a mechanism for addressing situations in which new water rights issued to cannabis diverters will compete with ongoing undocumented or documented surface water diversions and domestic water users. END**

*Summary response: All cannabis cultivators are required to divert water under the claim of a valid water right or a valid water right, whether it is an appropriative water right, Small Irrigation Use Registration, or pre-1914 water right. Water availability is reviewed during the water right application process regardless of the water right type. The State Water Board will continue to enforce on undocumented, illegal water diverters in an effort to bring people into compliance.*

*The Policy limits the amount of water that can be diverted from a watershed for cannabis cultivation through a combination of instream flow and related requirements, including: visual bypass requirements at the point of diversion, numeric flow requirements during the wet (diversion) season, a forbearance period, and maximum diversion rate. Additionally, per the Policy, cannabis cultivators in ungaged watersheds (such as smaller tributaries) may be required to install a gage if information indicates that use of the assigned compliance gage does not adequately protect instream flows.*

*Gages were evaluated for use as a compliance gage based on the location and available stream flow data. Based on this evaluation, the gages were placed into three main categories: compliance gage, compliance gage downstream of a dam, or excluded gage. Gages were excluded if they were not active, were slated for de-activation, did not report discharge, did not measure streamflow, or were heavily impacted by anthropogenic actions. Due to the tight timeframe for development of a policy (before January 1, 2018 commercial cannabis licensing deadline), the compliance gage evaluation was done at a coarse scale. Based on the course evaluation, the USGS gage on Lagunitas Creek in Marin County was excluded due to anthropogenic actions (i.e., downstream of large regulating reservoirs). The State Water Board recognizes that there are many additional gages throughout the state, including possibly the Lagunitas Creek gage that may be appropriate as compliance gages. To address this, the Policy allows for cannabis cultivators to submit a request to the Deputy Director of Water Rights for approval to use or install, maintain, and operate a local gage and move the flow Requirement compliance point to that gage location.*

END

Cannabis documents referenced:

### 021.005

Comment text: Most California gaged streams are already substantially over-allocated: "[California] water right allocations total 400 billion cubic meters, approximately five times the state's mean annual runoff. In the state's major river basins, water rights account for up to 1000% of natural surface water supplies1." Yet the Policy's "forbearance" process allows an expedited Water Right permit for unallocated streams most of which are not gaged and also likely over-allocate (we note that Policy Table 7 omits the USGS gage on Lagunitas Creek in Marin County).

Thus to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, the Policy should not allow Small Irrigation Use Registrations (SIUR) on over-allocated or un-gaged steams and set a modest upper limit consistent with water availability on conversions of forest or range land to cannabis cultivation. END

## Monitoring, reporting (MR)

### MR-08

**Summary comment: The Disturbed Area Stabilization Plan does not include requirements to address restoration of the habitat function of the disturbed area (ecological, riparian, and/or wetland functions). END**

*Summary response: Attachment A includes requirements regarding revegetation plans. An appropriately revegetated and protected riparian setback area will provide habitat for the indigenous species to repopulate the area. END*

Cannabis documents referenced: Att A: Sec 2, pg 25, Items 32-37

### 021.018

Comment text: There is also a significant environmental omission in the DAS Plan (Order Appendix D), which appears to be focused entirely on erosion control.

This DAS focus is adequate for erosion but not sufficient for restoration because it does not appear to require restoration of the habitat function of the disturbed area (i.e. ecological, riparian, and/or wetland functions).

END

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**Regulatory structure (RS)**

**RS-08**

**Summary comment: Although, CEQA exemption for Cannabis Policy and General Order do not involve relaxation of existing streamflow standards. However, the regulation is itself confusing, impractical and inadequate will inadvertently relax existing streamflow standards. (21.002) END**

*Summary response: The Cannabis Policy and General Order will not relax streamflow standards, provide a means to determine when surface water diversion is allowed, and limits the amount of water diverted. The Cannabis Policy requires that "Cannabis cultivators shall comply with either existing instream flow Requirements or the Tessmann instream flow Requirements, whichever is greater." END*

*Cannabis documents referenced:*

**021.002**

Comment text: The Board's 7/7/17 Public Notice (pg 3) states that the State Water Board "will rely on the CEQA exemptions in Water Code section 13149(b)(1), which states (emphasis ours) "actions of the board and the Department of Fish and Wildlife under this section shall be deemed to be within Section 15308 of Title 14 of the California Code of regulations, provided that those actions do not involve relaxation of existing streamflow standards." But a regulation that is confusing, impractical and inadequate will indeed inadvertently relax existing streamflow standards. END

**RS-09**

**Summary comment: Cannabis Policy and General Order do not establish measurable and enforceable performance standards that are proactive and cost effective. Further, to qualify for a CEQA exemption to have no significant environmental impacts, Cannabis Policy shall allow Regional Board's to establish measurable and enforceable performance standards. (21.006, 38.027) END**

*Summary response: The Cannabis Policy and General Order do establish measurable and enforceable standards – including, but not limited to, slope thresholds for tier designations and compliance gage requirements to ensure streamflow standards are being met. Staff have worked to balance the cost of compliance with need to protect water quality and the beneficial uses of water. The CEQA exemption for approvals for which it can be "seen with certainty" that no significant environmental impacts will result necessarily relies on a comparison of the post-approval environment with the environmental baseline. Currently, cannabis cultivation is occurring in California's watersheds without being subject to many of the water quality and diversion-related requirements in the Policy and General Order. Compared with the environmental impacts of cannabis cultivation that is currently occurring, those requirements will not result in a relaxation of applicable environmental laws and will not result in new environmental impacts. To the contrary, the requirements in the Policy and the General Order will reduce the environmental impacts of cannabis cultivation in California. END*

*Cannabis documents referenced:*

**021.006**

Comment text: The Policy and Order do not establish measureable and enforceable performance standards, but instead rely on generic language regarding typical to all Basin Plan Discharge Prohibitions and Water quality standards. As one of many examples, the Order (Attachment A pg. 14, item 24) states, "Cannabis cultivators shall not discharge in a manner that creates or threatens to create a condition of pollution or nuisance, as defined by Water Code section 13050. " Thus a cannabis grower has to comply based on a personal interpretation of generic terms like "creates" or "threatens" of which the regulatory agency may have a different interpretation. It would be much clearer for both the grower and regulator if each Regional Board were given the authority to establish performance standards appropriate for local conditions and to specify what factors must be considered in modeling compliance. Save Our Seashore is most familiar with Region 2, which includes in its Napa and Sonoma Vineyard General Waste Discharge Requirements 1 multiple performance and modeling standards for factors including allowable soil loss, peak storm runoff, etc. As another of many examples of where performance standards are needed, the Cannabis Policy (page 21) states "Erosion prevention measures may include...upslope storm water diversion." Indeed, such a diversion may prevent undue erosion but it will also increase peak flows downslope. On larger parcels, such hydrologic changes could increase downstream flooding and channel instability and/or decrease groundwater recharge. So a balance needs to be struck between competing mitigations (erosion control vs hydrological changes), but that balance is impossible to achieve without performance standards for both. Thus to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, this Cannabis Policy should allow Regional Boards to establish measureable and enforceable performance standards. END

**RS-10**

**Summary comment: Grape growers in Region 2 who consider cultivating slopes over 5% are required to prepare an erosion control plan stamped by a civil engineer, whereas the Cannabis General Order requires self-certifying a hand-drawn site management plan. This is unfair and discriminatory against other growers. The Cannabis Policy relies on self-certification for compliance with all applicable requirements. Cannabis cultivators will not be familiar or experienced with these concepts and extensive regulations, so relying on self-certification risks widespread non-compliance. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The State Water Board developed statewide requirements for cannabis cultivators based on balancing the need to protect water quality and beneficial uses, on the one hand, with practical limitations facing cannabis cultivators, on the other. Unlike in other agricultural industries with more established regulatory regimes, cannabis cultivators in California often have difficulty finding qualified professionals who are available to prepare documents required by environmental regulators such as the State and Regional Water Boards. Additionally, where and how cannabis is cultivated in California differs from how other crops are cultivated in some material respects that are reflected in the requirements of the Policy and the General Order. The State Water Board endeavored to harmonize those requirements with existing requirements under certain Regional Water Board orders, but because of the diversity of requirements across the nine Regional Water Boards, it was not possible to develop statewide requirements for cannabis cultivation that would be consistent with all existing Regional Water Board orders.*

*Self-certification is an appropriate approach to initiate the State Water Board's cannabis regulatory programs given the short timeframe (by January 1, 2018) and large number of cultivators entering the regulated community. The Cannabis General Order requires that cannabis cultivators self-certify that all applicable best practicable treatment control (BPTC) measures are being implemented, or will be implemented by the onset of the winter period, following the enrollment date. Cannabis cultivators that cannot implement all applicable BPTC measures by the onset of the winter period, following their enrollment date, shall submit to the Regional Water Board Executive Officer a Site Management Plan that includes a time schedule and scope of work for use by the Regional Water Board in developing a compliance schedule.*

*Cannabis cultivators that do not comply with the requirements of the Cannabis Policy and General Order will be subject to enforcement activities from the Water Boards. Those enforcement activities may include orders for technical reports, revised and/or additional monitoring requirements, cleanup and abatement orders, cease and desist orders, administrative civil liabilities (fines), and a number of other enforcement alternatives, including terminating authorization to cultivate cannabis and a remedial order. The California Water Code provides ample authority for the Water Boards to address non-compliant cannabis cultivators. The State Water Board has an established cannabis enforcement program that will continue to work with the Regional Water Boards and California Department of Fish and Wildlife to address violations of the Policy and complaints.*

*END*

*Cannabis documents referenced: CCP pg. 17-23*

#### 021.010

Comment text: Thus, under the current draft, a grape grower who is considering cultivating slopes over 5% in Region 2 and is required to prepare an Erosion Control Plan stamped by a civil engineer...could instead be motivated to rent his hillside to a Cannabis grower who could cultivate those same slopes after a phone call to a local surveyor and self-certifying a hand-drawn "Site Management Plan." Such an unintended consequence is unfair and discriminatory. END

### RS-28

#### **Summary comment: The Policy is inconsistent and confusing. END**

*Summary response: The Cannabis Policy and General Order are large documents and may appear to be overwhelming for people unfamiliar with the regulatory environment. The complexity of the documents reflects the complexity of the industry and the diversity of physical settings and impacts that can be associated with cannabis cultivation in California. Cultivators can contact Water Board staff for clarifications on requirements as needed.*

*The Cannabis Policy and General Order have been updated to address any known inconsistencies and confusions. Additionally, Water Code section 13149 authorizes the State Water Board to develop both interim and long-term requirements and update them as necessary. It is anticipated that the State Water Board will update the Policy over time to modify or add requirements to address cannabis cultivation impacts, as needed. END*

*Cannabis documents referenced:*

#### 021.001

Comment text: Unfortunately, given tight deadlines, this Cannabis Policy appears to have been necessarily assembled in haste without the careful review typical of the State Board. As a result, the current draft Cannabis Policy is so confusing that it will not only be impossible for any grower to comply with but also impossible for any regulator to enforce. END

#### 021.017

Comment text: Given that such confusions, inconsistencies and slightly altered wordings in the Policy, it is unclear how any proposal could be deemed "consistent with this Policy." This puts an undue burden on both the grower trying to comply and the regulator trying to administer because it is unclear what submittals and approvals are required by the Order. END

### Road building, land disturbance, slope stability (RB)

#### RB-09

#### **Summary comment: Concern over the lack of requirements and regulation of the construction of roads related to cannabis construction. END**

*Summary response: Please see Attachment 1 for RB-09 summary response. END*

*Cannabis documents referenced: Staff Report, Road Const & Maintenance, p 37;*

#### 021.014



**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

*Updated: 10/13/2017*

Comment text: Please see Attachment 1 for 21.014 comment text. END

**xDELETED**

*Summary comment: Deleted comment END*

*Summary response: Deleted comment END*

*Cannabis documents referenced: Deleted comment*

**021.020**

Comment text: Comment deleted - combined with comment 21.014. END

**Setbacks (SB)**

**SB-09**

*Summary comment: Likewise , the Order (Attachment A, pg. 25, 33-35) appears to allow impacts within the required setbacks with a mitigation plan that calls for a ratio of 3-1 for loss of oak or riparian trees. But revegetating, even at a higher ratio, does not fully compensate for loss of riparian function. END*

*Summary response: These requirements, along with others contained in the Cannabis Policy and General Order, are protective of riparian habitat and riparian function. The Cannabis Policy and General Order establish riparian setbacks based upon stream classification and restrict disturbance within the setbacks. Any disturbance is properly mitigated so impacts are minimal. Any loss of riparian function would be restored. END*

*Cannabis documents referenced:*

**021.019**

Comment text: Likewise , the Order (Attachment A, pg. 25, 33-35) appears to allow impacts within the required setbacks with a mitigation plan that calls for a ratio of 3-1 for loss of oak or riparian trees. But revegetating, even at a higher ratio, does not fully compensate for loss of riparian function. END

**Stream crossing (SC)**

**SC-02**

*Summary comment: In order to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, the Cannabis Policy should state that:*

- The burden for stream crossings is on the developer to show that, cost notwithstanding, no other alternatives exist.*
- Crossings in Low Risk areas may use the PWR Manual guidelines; Crossings in Moderate Risk Areas require a design by a bridge engineer; Crossings in High Risk Areas should require a separate CEQA analysis and a design by a bridge engineer. Crossings on slopes over 50% are prohibited.*
- An experienced qualified professional will design all crossings, oversee the work, and stamp that it was done per plan. Culverts shall be designed by an experienced fluvial geomorphologist.*
- All crossings will require a Lake and Streambed Alteration Permit END*

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy and Cannabis General Order require cannabis cultivators to ensure that new roads and existing roads are constructed or upgraded in accordance with the Forest Practice Rules requirements, and the Road Handbook describes how to implement the Forest Practice Rules requirements for road construction. Additionally, the Cannabis Policy and Cannabis General Order require cannabis cultivators to hire qualified professionals as necessary to perform specific work, and to obtain a Lake or Streambed Alteration Agreement prior to commencing any activity that will be performed in aquatic environments, including activities such as stream crossings. Cannabis cultivators are also required to obtain all necessary permits, which may necessitate compliance with CEQA if the activity is deemed a project. Riparian incursions are addressed by the statement that road impacts avoid riparian areas and setbacks to the maximum extent practicable.*

*Construction on very steep slopes (over 50%) is not desirable. However, State Water Board staff acknowledges that such site conditions exist and, in some regions, such construction may be unavoidable. If local regulations prohibit this activity altogether, the Cannabis Policy does not supersede those local regulations. The Cannabis Policy and General Order provide that site-specific WDRs may be required to address construction on very steep slopes. The site-specific WDRs will be at least as restrictive as what is required by the Cannabis Policy. If site-specific WDRs or water quality certifications are required for road building activities, the discretionary action of the Regional Water Board triggers the need for CEQA compliance.*

*CEQA's exemption for approvals of projects when it can be "seen with certainty" that no significant environmental impacts will result necessarily relies on a comparison of the environmental baseline with any environmental impacts resulting from the approval. Currently, cannabis cultivation is occurring throughout California without being subject to many of the requirements contained in the Policy and General Order. The Policy and General Order impose requirements that will reduce rather than increase these impacts, and no additional impacts will result from approval of the Policy and General Order compared to existing conditions. It should also be noted that, even if the "seen with certainty" exemption did not apply, approval of the Policy and General Order fall within a statutory exemption. California Water Code section 13149(b)(1) states, "Notwithstanding Section 15300.2 of Title 14 of the California Code of Regulations, actions of the board and the Department of Fish and Wildlife under this section shall be deemed to be within Section 15308 of Title 14 of the California Code of regulations, provided that those actions do not involve relaxation of existing streamflow standards." The Policy contains restrictions on the timing and extent of diversions to ensure that cannabis cultivation in compliance with the Policy will not result in a relaxation of streamflow standards.*

*The Cannabis Policy and General Order require roads to be designed by licensed professionals and those professionals must certify the work. (See definition of qualified professional.) The licensed professional in charge of road building work will be a civil engineer. The licensed professional may consult with a fluvial geomorphologist as appropriate, however a fluvial geomorphologist is not a license type under the California Business and Professions Code.*

END

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Cannabis documents referenced: Att A: Sec 2, pg 22, Item 17

#### 021.015

Comment text: As these Documents specify for road design, they also specify the Pacific Watershed Roads (PWR) Manual for design of stream crossings. The PWR Manual provides guidelines that use standardized wet crossings, culverts, and/or grade controls. The PWR guidelines are known to be acceptably for low slopes (5% or less) and small drainages (under 40-100 acres where the soil type and slope (the "Rational Method") can be used to predict 100-year storm flows. However, as slopes steepen and drainages grow over 40-100 acres, the PWR guidelines become increasingly unreliable<sup>1</sup>. Again, forestry roads and crossings are sited by necessity to harvest trees in and across riparian zones. The PWR Manual cannot and does not eliminate the resulting impacts, but can provide the best possible environmental protection given the necessity to site these roads and crossings to harvest trees in riparian zones. Cannabis watercourse crossings, in contrast, are often sited where it is convenient. It is therefore inappropriate and environmentally impactful for the Documents to instruct cultivators to rely on Pacific Watershed Manual guidelines in all cases. Further, as with roads (Concern 3), these Documents provide no performance standards, no requirement for a stamped design document and no verification of properly installation. Also, Appendix A pg 20 (term 5) appears to cut both State and Regional Boards off from their customary review of all stream crossing proposals. Further still, the blanket reference to qualified professions, even if the errors are corrected (see Concern #5) is not helpful to growers. Bridge design is an engineering specialty and culverts that do not trigger scours or headcuts yet pass both fish and appropriate gravel should be designed by an experienced fluvial geomorphologist (rather than any "qualified professional"). Also, the Documents do suggest reducing impacts from stream crossings by "minimizing" such crossing but the impacts from such crossing will still be significant. But such terms as "minimizing" are not easily understood or regulated. This appears to put the burden on the regulator to demonstrate impact when the burden should be on the developer to demonstrate that, cost notwithstanding, there are no physical alternatives that could avoid having to construct a watercourse crossing. The criteria for bridge design standards should vary by the Risk category of the area, with PWR guidelines used for Low Risk, but increasing standards for higher risk categories.

Lastly the Order should make clearer that all crossings will require a Lake and Streambed Alteration Permit.

In order to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, the Cannabis Policy should state that:

- The burden for stream crossings is on the developer to show that, cost notwithstanding, no other alternatives exist.
- C crossings in Low Risk areas may use the PWR Manual guidelines; Crossings in Moderate Risk Areas require a design by a bridge engineer; Crossings in High Risk Areas should require a separate CEQA analysis and a design by a bridge engineer. Crossings on slopes over 50% are prohibited.
- An experienced qualified professional will design all crossings, oversee the work, and stamp that it was done per plan. Culverts shall be designed by an experienced fluvial geomorphologist.
- All crossings will require a Lake and Streambed Alteration Permit

END

Water rights (WR)

WR-17

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary comment: The Cannabis Policy pg 11 states, "the cannabis cultivator shall maintain a minimum bypass of at least 50% of the streamflow past the cannabis cultivator's point of diversion, in addition to the applicable numeric instream flow Requirements."*

*Thus a mere 7 consecutive 50% bypasses would reduce the flow to less than 1% (0.507) over the numeric instream flow requirement. This 50% Policy virtually assures that many streams will be reduced to the minimum numeric instream flow requirement.*

*Yet the Policy's methodology for setting numeric instream flow requirements seems unreasonable, since it is based on an old (1979) model developed by Tessman for Western Dakota streams. California's Mediterranean climate likely demands that minimum streams flows need to be adjusted upward.*

*Further, the Cannabis Policy appears not to acknowledge that the Tessman minimum stream flows for fish migration may not also be the minimum needed for the geomorphic flows also needed for fish survival. Thus by the Cannabis Policy asserting an unreasonably low streamflow standard, the Policy has defacto manufactured its own CEQA exemption.*

*In another example of streamflow confusion, the proposed withdrawing of winter water stored for summer use is benign compared to summer withdrawal, but the Policy fails to acknowledge that winter withdrawals may have significant impacts when the stream is over allocated.*

*Further, winter withdrawals should begin after a greater-than-2-year storm event and end quickly after the flow subsides in order to skim off only the peak of the peak flow. Skimming only the peak of the peak flow protects winter base flow and thus fish migration. Performance standards allow winter withdrawal start and end times to be calibrated to each individual water course and adjusted when the on-average-every-seven-year drought occurs.*

*In contrast, Attachment A pg 42 notes, "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...applicable minimum monthly instream flow Requirement....and shall continue for "any day in which the surface waterbody's real-time daily average flow is greater than the...applicable minimum monthly instream flow Requirement."*

*Again, the Cannabis Policy's use of the Tessman calculation asserts that anything above the minimum flow is available for cultivation use. This standard does not address the needed for higher geomorphic flows required for fish survival and general watercourse health.*

*Yet the Board's 7/7/17 Public Notice (pg 3) states that the State Water Board will rely on the CEQA exemptions in Water Code section 13149(b)(1), which states (emphasis ours) "actions of the board and the Department of Fish and Wildlife under this section shall be deemed to be within Section 15308 of Title 14 of the California Code of regulations, provided that those actions do not involve relaxation of existing streamflow standards."*

*In order to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, the Cannabis Policy should revise the minimum flow requirements to allow for higher geomorphic flows required for fish survival and general watercourse health.*

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*Summary response: In order to protect environmental resources and designated beneficial uses, the Policy contains numerous requirements that must be met before water can be diverted. One of those requirements is the 50 percent visual bypass mentioned in the comment. This is a narrative requirement above the numeric minimum instream flow requirements. The numeric minimum instream flow requirement must be met before the 50 percent bypass requirement goes into effect.*

*Additionally, any cannabis cultivator must have a valid water right in order to divert surface water. (See also generally Bus. & Prof. Code, § 26060.1, subd. (a)(2).) The State Water Board will evaluate water availability during the water right application process, thus ensuring that streams are not over allocated.*

*There has been no evidence provided that the proposed instream flow requirements would result in the relaxation of existing streamflow standards. Furthermore, the Policy states that in the event of duplicate or conflicting requirements, the most stringent shall be put in place. The State Water Board feels that the instream flow requirements, forbearance period, and diversion rate restrictions are protective of water resources, water quality, designated beneficial uses, and geomorphological processes.*

*END*

*Cannabis documents referenced:*

**021.012**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: The Cannabis Policy pg 11 states, "the cannabis cultivator shall maintain a minimum bypass of at least 50% of the streamflow past the cannabis cultivator's point of diversion, in addition to the applicable numeric instream flow Requirements."

Thus a mere 7 consecutive 50% bypasses would reduce the flow to less than 1% (0.507) over the numeric instream flow requirement. This 50% Policy virtually assures that many streams will be reduced to the minimum numeric instream flow requirement.

Yet the Policy's methodology for setting numeric instream flow requirements seems unreasonable, since it is based on an old (1979) model developed by Tessman for Western Dakota streams<sup>1</sup>. California's Mediterranean climate likely demands that minimum streams flows need to be adjusted upward.

Further, the Cannabis Policy appears not to acknowledge that the Tessman minimum stream flows for fish migration may not also be the minimum needed for the geomorphic flows also needed for fish survival. Thus by the Cannabis Policy asserting an unreasonably low streamflow standard, the Policy has defacto manufactured its own CEQA exemption.

In another example of streamflow confusion, the proposed withdrawing of winter water stored for summer use is benign compared to summer withdrawal, but the Policy fails to acknowledge that winter withdrawals may have significant impacts when the stream is over allocated.

Further, winter withdrawals should begin after a greater-than-2-year storm event and end quickly after the flow subsides in order to skim off only the peak of the peak flow. Skimming only the peak of the peak flow protects winter base flow and thus fish migration. Performance standards allow winter withdrawal start and end times to be calibrated to each individual water course and adjusted when the on-average-every-seven-year drought occurs.

In contrast, Attachment A pg 42 notes, "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...applicable minimum monthly instream flow Requirement....and shall continue for "any day in which the surface waterbody's real-time daily average flow is greater than the...applicable minimum monthly instream flow Requirement."

Again, the Cannabis Policy's use of the Tessman calculation asserts that anything above the minimum flow is available for cultivation use. This standard does not address the needed for higher geomorphic flows required for fish survival and general watercourse health.

Yet the Board's 7/7/17 Public Notice (pg 3) states that the State Water Board will rely on the CEQA exemptions in Water Code section 13149(b)(1), which states (emphasis ours) "actions of the board and the Department of Fish and Wildlife under this section shall be deemed to be within Section 15308 of Title 14 of the California Code of regulations, provided that those actions do not involve relaxation of existing streamflow standards."

In order to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, the Cannabis Policy should revise the minimum flow requirements to allow for higher geomorphic flows required for fish survival and general watercourse health.

FND

#### Schackow, Matthew

##### Cost of compliance (CS)

###### CS-15

**Summary comment: Disallowing the use of plastic trellis places an unreasonable hardship on cannabis cultivators. END**

*Summary response: Plastic waste discarded on land frequently makes its way into surface waterbodies and eventually the ocean, as rain storms wash it into gutters and storm drains. Trash is a significant pollutant of California's waters that adversely affects beneficial uses, including those that support aquatic life, wildlife, or public health. In addition, because plastic degrades very slowly, plastic trash can be a significant entanglement, strangulation, and ingestion hazard for wildlife. On April 7, 2015, the State Water Board adopted Resolution 2015-0019, addressing trash discharges to ocean waters; on June 1, 2017 the State Water Board Executive Director issued water code section 13383 orders to Caltrans and small municipal separate storm sewer systems (MS4s) addressing trash requirements. Future orders adopted by the State and Regional Water Boards are anticipated to contain significant trash control requirements. The requirements in this order are consistent with the trash control measures described above. END*

*Cannabis documents referenced: Att A: Sec 1, pg 14, Item 23*

###### 044.002

Comment text: Another draft regulation that places unreasonable hardship on the farm is the one that disallows the use of plastic trellis. Plastic trellis is the most cost effective way to protect plants from the environmental influences of wind and keeps plants from breaking while holding them up as they mature. The alternative is using thousands upon thousands of bamboo stakes imported from china. Materials alone would cost thousands more but the real problem is the time it would take to install all the bamboo. With plastic trellis, we simply wrap the plants, with bamboo we have to attach every single shoot. It's unreasonable to ask of farmers. We always recycle all of the trellis carefully after the season. In 10 years of using this method I have never seen wildlife effected. END

#### Grandfather coverage (GR)

##### GR-01

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*

*END*

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Cannabis documents referenced:

#### 044.003

Comment text: I would request that Farmers currently enrolled in the regional water board order (that are in good standing) should not be subjected to the proposed state order until the regional order expires. END

### Setbacks (SB)

#### SB-01

***Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END***

*Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END*

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Cannabis documents referenced:

#### 044.001

Comment text: setbacks from class 3 waterways will be crippling to farms like mine. The draft setbacks will drastically and unnecessarily reduce the size of my cultivation area. This would make it impossible for my farm to operate. I understand the surface runoff is an issue and I want to preserve our water resources as best as I can. In this case, the topography in the area does not allow surface runoff from the cultivation area to discharge into the class 3 waterway that runs adjacent to the cultivation area. The cultivation area is in compliance with current setbacks. The farm is currently in compliance with the regional water board requirements. Schackow Farms has a current agreement with California Department of Fish and Wildlife. For which I have made major modifications to the onsite pond to satisfy water storage requirements. I have also had culverts updated to current standards and purchased an extremely expensive water meter as per CDFW demand. I hope you can understand that I have done all that has been asked of me thus far and it has been a fiscal hardship to do so. It would be unfortunate if the rules were to change now. Because I have limited agricultural space, I would not be able to shift my cultivation area to accommodate this unreasonable setback. This set back would cause the complete shutdown of a large section of the cultivation area. END

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**Shaffer, Dale**

**Application for coverage (AP)**

**AP-05**

**Summary comment: Provide guidance on how tail water should be handled for greenhouses after an impervious floor is installed. END**

*Summary response: In accordance with California Water Code section 13360, the Cannabis Policy and the Cannabis General Order do not specify the manner of compliance with waste discharge requirements. Cannabis cultivators have a variety of options for collecting and disposing of tail water. If the cultivator has access to a community collection system (sewer), they may obtain authorization from the system operator to discharge into it. If the cultivator does not have access to a sewer, they should contact the Regional Water Board regarding an onsite wastewater treatment system permit. END*

*Cannabis documents referenced: Policy: pg 16, par 4, 6; Att A: Sec 1, pg 14, Item 25; Staff rpt: pg 35, par 7; Order: pg 5, F14, 14.b; Order: pg 13, F41.c*

**033.002**

*Comment text: Are there any ways to address how to go in and fix a greenhouse that you want to do light depro in, but you don't want it to permeate down into the ground where it may create issues of percolation, contamination of soils. Some discussion, if you will, about how to seal that floor, and then if you seal it and it's not a closed system, is there going to be tail water? What can be done to address tail water that might be coming off of that? END*

**AP-06**

**Summary comment: Provide guidance on how to make sure the floor is impervious. END**

*Summary response: In accordance with California Water Code section 13360, the Cannabis Policy and the Cannabis General Order do not specify the manner of compliance with waste discharge requirements. However, the exemption for indoor cultivation activities requires a structure with a permanent roof and a permanent relatively impermeable floor. END*

*Cannabis documents referenced: Policy: pg 16, par 3; Order: pg 6, F14.a; Order: pg 13, F41.c*

**033.003**

*Comment text: I would like to have the Board perhaps with some regional boards and some local ag commissioners building the planning commissions, try to give us some guidance if someone's going to build ab initio or original construction, some guidance to get permits for local construction to make sure the floor's not permeable, and maybe you don't have to go the full one or two tier registration here, but register nonetheless, would not be as big a concern. END*

**WW discharge location (WW)**

**WW-01**

**Summary comment: What can you do with indoor hydroponic cultivation wastewater if you can't discharge into a standard sewer line? The wastewater may not be usable by any other industry and it may have to be remediated. END**

*Summary response: Discharges of irrigation tail water, hydroponic wastewater, or other miscellaneous industrial wastewaters from indoor cannabis cultivation activities to an on-site wastewater treatment system (such as a septic tank and leach field), to land, or to surface water must obtain separate regulatory authorization (e.g., waste discharge requirement [WDRs], conditional waiver of WDRs, or other permit mechanism) to discharge the wastewater. END*

*Cannabis documents referenced: Policy: pg 16, par 5; Order: pg 5 – 6, F.14*

**033.001**

*Comment text: What to do with this hydroponic wastewater if you can't dump it into a traditional treatment -- you know -- a standard sewer line, if you will, there might be need to address what do you do with these -- they may not be usable by any other industry; may have to be remediated. END*

**Sherrell, Roy**

**Regulatory structure (RS)**

**RS-23**

**Summary comment: I assert that the January 1, 2017 deadline of the Draft Cannabis Cultivation Policy is arbitrary and perhaps unlawful. At the very least, the State Water Resources Control Board should honor the statutory deadline of July 1, 2017 established in the MCRSA (California Business and Professions Code 19322.2). (72.002) END**

*Summary response: The January 1, 2017 deadline has been updated to October 31, 2017 and is only a cut off for certain existing and permitted onstream reservoirs to qualify for a transfer to the Small Irrigation and Use Registration Program. All unpermitted onstream reservoirs will have to go through the appropriative water right process in order to determine that they are stable and not a threat to water quality or designated beneficial uses.*

*Regardless, all onstream reservoirs shall be operated in a manner that is consistent with the requirements of the Policy including, but not limited to, all bypass flow requirements and forbearance periods. END*

*Cannabis documents referenced:*

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**072.002**

Comment text: I assert that the January 1, 2017 deadline of the Draft Cannabis Cultivation Policy is arbitrary and perhaps unlawful. At the very least, the State Water Resources Control Board should honor the statutory deadline of July 1, 2017 established in the MCRSA (California Business and Professions Code 19322.2). END

**Water diversion, storage (WS)**

**WS-03**

**Summary comment: The Policy should not prohibit onstream reservoirs on class III streams. END**

*Summary response: The Policy does not prohibit onstream storage reservoirs. However, onstream storage reservoirs that do not have a valid existing water right for irrigation, issued prior to October 17, 2017 will not be able to qualify for the Small Irrigation Use Registration Program.*

*Any cannabis cultivator who wants to use an onstream storage reservoir for cannabis cultivation who does not have an existing water right will have to go through the appropriate water right process. The Policy is unable to evaluate or mitigate, the potential environmental impacts of unpermitted onstream reservoirs. Such impacts will be identified and mitigated in the appropriate water right process. Additionally, new onstream reservoir construction includes potential impacts that would require analysis through the California Environmental Quality Act process, which is not covered under the Policy.*

*In addition, the Policy requires that all onstream reservoirs used for cannabis cultivation shall be operated in a manner that is consistent with the requirements of the Policy including, but not limited to, all bypass flow requirements and forbearance periods.*  
END

*Cannabis documents referenced:*

**072.001**

Comment text: If they are not allowed to use water stored in these onstream storage reservoirs/stock ponds, they will be forced to develop other water storage facilities and associated water diversion and conveyance works to comply with the Policy and General Order, yet the onstream storage reservoirs will remain. This will result in a significant increase in the amount of water diverted and stored on a property that has a cultivation operation, but it will not reduce the amount of diverted/stored water used at a given operation. Ultimately this will lead to less water availability to fish and aquatic wildlife, even if every cannabis cultivator in a given watershed complies with all elements of the Draft Policy and General Order.  
END

**072.003**

Comment text: Additionally, I assert that a prohibition on onstream storage reservoirs located on Class III streams not in excess of 20 acre-feet per annum (or not allowing owners/users of those reservoirs to participate in the Small Irrigation Use Registration Program) will drive a new wave of environmental disturbances associated with cannabis cultivation, as cultivators currently using onstream storage will excavate off-stream water storage facilities. The onstream storage reservoirs will continue to impede water movement through those Class III watercourses, but additional water will be diverted to off-stream storage reservoirs, further limiting the amount of water moving naturally through the watershed.  
END

**Sierra Club California**

**Application for coverage (AP)**

**AP-02**

**Summary comment: The slopes for each risk designation should be revised to something lower. END**

*Summary response: The commenter doesn't specify what criteria is recommended. The slope and erosion potential relationship are presented in the Cannabis Staff Report and best practicable treatment or control measures to prevent erosion are presented in Attachment A. The documents were revised to include: all moderate risk sites (disturbed area slope greater than 30 percent) are required to include a slope stability evaluation as part of the Site Erosion Sediment Control Plan. The Cannabis General Order and the Cannabis Policy require a qualified professional to inspect slopes for indications of instability prior to the cultivator engaging in cultivation or land disturbance activities. The Cannabis General Order and the Cannabis Policy also require that if there is an indication of instability, the cultivator shall consult with a qualified professional to design measures to stabilize the slope and prevent sediment discharges to surface waters, and does not allow cultivation or land disturbance activities to take place until the Site Erosion Sediment Control Plan and/or the Disturbed Area Stabilization Plan are approved by the Regional Water Board Executive Officer. Based on the slope stability analysis, technical report preparation, and implementation, and monitoring required of Tier 1 and Tier 2 sites, a lower slope requirement is not needed. A change was made to require a mandatory slope stability assessment for moderate risk cultivation sites. END*

*Cannabis documents referenced: Policy: pg 14, Tbl 1; Policy: pg 15, par 2; Policy: pg 16, Item c; Att A: Sec 1, pg 14, Item 30; Att A: Sec 1, pg 15, Item 32; Att A: Sec 2, pg 19, Item 2; Att A: Sec 2, pg 39, Item 130; Att A: Sec 5, pg 68, par 3; Staff rpt: pg 38; Order: pg 4, F10; Order: pg 5, F12-13; Order: pg 13, F41.f*

**042.006**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: Both the Policy and General Order establish a maximum slope of 30 percent as the threshold between some Low and Moderate Risk projects, and allow a slope of up to 50 percent as the lower limit of High Risk. We contend that these standards are not nearly restrictive enough to protect surface waters from undue erosion risk, whether or not riparian setbacks are maintained. Instead, we suggest a maximum of 15 percent as the determinant for a Low Risk site, and 30 percent for Moderate risk. Neither cultivation nor road construction should be allowed at all on slopes greater than 45 percent. We also suggest that soil types, which vary a great deal in their stability and ability to hold water, be taken into consideration in determining risk categories. END

#### AP-03

**Summary comment: Roads and other permanent or temporary projects that are exempt in the Cannabis General Order and Cannabis Policy but that would need a Clean Water Act section 401 or section 404 permit, or a Lake and Streambed Alteration agreement, should be included as part of the total disturbed area calculation. END**

*Summary response: The Cannabis Policy exempts new and/or existing roads that were built and maintained in accordance with the Road Handbook from the total disturbed area calculation. The Cannabis Policy also requires implementation of BPTC measures for maintenance of existing roads and associated storm drainage features. Activities authorized under a CDFW Lake or Stream Alteration Agreement or under a water quality certification, and built in accordance with the Road Handbook and Forest Practice Rules, are exempt from the total disturbed area calculation because these applicants are already required to implement standards to reduce sediment discharges to surface waters. END*

*Cannabis documents referenced: Land Disturbance Definition: Policy: Att B, pg 6, par 1; Staff rpt App 3, pg 6, par 1*

*WQ Cert/LSA exempt from disturbed area total: Policy: pg 13, par 10; Policy: pg 17, par 2; Att A: Sec 5, pg 70, par 3; Staff rpt: pg 33, par 4; Staff rpt: pg 34, par 1; Staff rpt: pg 72, par 3; Order: pg 4, F11; Order: pg 13, F41.f.iii; Order: pg 17, Table 2, fn 5; Order: pg 18, Item C.1.c; Order: Att D, pg D-9, par 3*

*Forest Practice Rules: Att A: Sec 5, pg 70, par 4; Staff rpt: pg 37, par 2*

*BPTC: Att A: Sec 2, pg 20, Item 5; Att A: Sec 2, pg 22, Items 16-29; Att A: Sec 2, pg 28, Items 50-51, 55, 56; Staff rpt: pg 37, par 1*

#### 042.003

Comment text: When access roads cross or approach riparian areas those sites should be considered high risk, and the relevant Policy and General Order sections revised accordingly. Land disturbed for access roads should also be included in assessing the Total Disturbed Area, and the appropriate regulatory tier determined accordingly. END

#### CEQA, permits (CQ)

##### CQ-01

**Summary comment: While this draft, when amended, could qualify covered cannabis activities for a CEQA exemption, this draft must also make clear that irrespective of this Cannabis Policy, any action with the potential to impact state waters or state-listed endangered species will trigger CEQA. END**

*Summary response: CEQA applies only to discretionary approvals of "projects" by state or local government agencies. Thus, actions by private individuals and actions by state or local agencies that are not discretionary approval of "projects" do not trigger CEQA. Therefore, the commenter's suggested addition would be an incorrect statement of the scope of the law.*

*As stated in the Policy, Water Code section 13149, subdivision (b)(1), provides that the Policy shall qualify for a categorical exemption, and that the exception to categorical exemptions when activities may nonetheless have a significant impact on the environment shall not apply. ("Notwithstanding Section 15300.2 of Title 14 of the California Code of Regulations, actions of the board ... under this section shall be deemed to be within Section 15308 ..., provided that those actions do not involve relaxation of existing streamflow standards.") In effect, this statutory exemption precludes the State Water Board from applying CEQA to the Policy so long as the Policy does not reduce allowable instream flows. This statutory exemption was enacted by the California Legislature and therefore is beyond the State Water Board's legal authority to change. END*

*Cannabis documents referenced:*

#### 042.001

Comment text: CEQA compliance is not addressed anywhere else in the Policy and Guidelines, which should be revised to state that actions with potential impacts to waters of the State and/or federal or state listed species will require CEQA review before they can be implemented. We recommend that SWRCB follow the example of the California Department of Food and Agriculture (CDFA) which conducted a full Programmatic Environmental Impact Report on its proposed cannabis cultivation regulations, regulations that in many respects parallel those provided by SWRCB in these documents. END

#### CQ-03



## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: Protection of endangered and threatened species: The policy as presented (General Requirement 4) describes the applicant's responsibility in regards to special status species plants and wildlife under state and federal law but lacks guidelines that present steps that would initiate consultation with NMFS, USFWS and CDFW. While it does make the cultivator responsible for "meeting all requirements under the California ESA and the federal ESA" it lacks a statement of the initiating actions and timing of consultation with the wildlife agencies that would be needed to fulfill the applicant's permit requirements...The Policy and Guidelines should be revised to clearly state how take of listed species will be prevented, and to identify triggers and process for initiation of all appropriate wildlife consultations. Just as the State cannot afford to allow impacts to Waters of the United States under this Policy, nor can it afford to allow take of listed species. The Policy and General Order should explicitly establish methods to prevent take of listed species and establish a consultation mechanism for any projects possibly impacting them. Additional procedures should be required to prevent take, including a defined consultation process with USFWS and NMFS.**

**END**

*Summary response: The Cannabis Policy pertains specifically to the State Water Board's authority and is not intended to be an all-encompassing document containing information regarding all potentially applicable regulatory requirements. Specifying how to comply with existing state and federal laws protecting endangered and other Special-Status Species is beyond the scope of the Cannabis Policy. As stated in the Policy, where cannabis cultivation would result in a "take" of a protected species, the cannabis cultivator is responsible for working with the applicable agencies to discern what type of authorization is required and obtaining that authorization. Cannabis cultivators are not unique in being subject to these laws of general applicability; other industries and individuals also bear responsibility for working with responsible state and federal fish and wildlife agencies to discern how to comply with the law and avoid a take of protected species. Such compliance often relies on site-specific factors and analyses, so including guidelines for compliance with these laws in the Policy likely would be of little utility for cannabis cultivators. Cannabis cultivators unsure of how to comply with laws protecting endangered or Special-Status Species should consult with the California Department of Fish and Wildlife.*

*The State Water Board is not aware of any actual or potential conflicts between California and federal law that would preclude a cannabis cultivator from complying with both. Any such conflicts will be resolved as they materialize on a case-by-case basis.*

*Pursuant to Water Code section 13149(b), the adoption of the Policy is exempt from CEQA. However, discretionary approvals that local public agencies such as counties may require for cannabis operations may trigger the need for project-specific CEQA compliance.*

**END**

*Cannabis documents referenced:*

#### **042.004**

*Comment text: Instead, the Policy and General Order should explicitly establish methods to prevent take of listed species and establish a consultation mechanism for any projects possibly impacting them. END*

### **Definitions (DE)**

#### **DE-08**

**Summary comment: The definition of land disturbance includes "all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access," but it is not always clear whether land disturbance for road construction is counted in the acreage totals for Total Disturbed Area.**

**END**

*Summary response: The definition of land disturbance has been updated in the Cannabis Policy and General Order to clarify that access roads that are designed, constructed, and maintained, or are updated consistent with the Handbook for Forest, Ranch, and Rural Roads (Road Handbook), and that implement the interim and long term erosion prevention and soil stabilization measures contained in Attachment A, are not considered disturbed areas for the purpose of tier determination under the Cannabis General Order. Excluding access roads that are designed, constructed, and maintained, or updated consistent with the Road Handbook incentivizes BPTC measures and improves protection of water quality. END*

*Cannabis documents referenced: General Order Finding 8a; Policy & General Order Att A, Section 5, Disturbed Area Stabilization Plan; Staff Report, General WQ Certification, Dredge or Fill Materials, pg 34.*

#### **042.002**

*Comment text:*

*Access roads. The definition of land disturbance includes "all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access," but it is not always clear whether land disturbance for road construction is counted in the acreage totals for Total Disturbed Area. Specifically, the Policy exempts roads covered by Clean Water Act (CWA) permits from consideration as disturbed land in riparian setbacks. No rationale for this exclusion is provided, and we recommend that it be eliminated.*

**END**

#### **DE-12**

**Summary comment: "An egregious error. For the most part these documents appear to be accurate and carefully composed, but both (p. 21) refer to a nonexistent organization called the "California Exotic Pest Plant Council" in place of the highly respected California Invasive Plant Council." END**

*Summary response: The "California Invasive Plant Council" was known as the "California Exotic Pest Plant Council" until approximately 2003. The name of the council has been updated in the Policy. END*

*Cannabis documents referenced: Attachment A, page 21*

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**042.007**

Comment text: An egregious error. For the most part these documents appear to be accurate and carefully composed, but both (p. 21) refer to a nonexistent organization called the "California Exotic Pest Plant Council" in place of the highly respected California Invasive Plant Council. END

**Tribal, cultural (TC)**

**TC-02**

**Summary comment: Tribal lands. Both the General Order and the Policy make repeated use of the phrase "Indian country" in referencing tribal lands. Not only does this expression lack legal precision, it is sometimes considered pejorative. Alternative wording is needed END**

*Summary response: "Indian country" is a technical, legal term defined in title 18 United States Code section 1151 to describe lands where tribal jurisdiction may apply under federal law. The Cannabis Policy forbids cannabis cultivation on these lands without tribal authorization. Referencing the federal law definition of "Indian country," by name, is necessary to clearly and unambiguously incorporate it into the definition of "tribal lands," and for legal precision. The State Water Board sought extensive input from California Native American tribes in developing Cannabis Policy provisions related to protecting tribal cultural resources and tribal lands. The Board is not aware of any California Native American tribe having objected to referencing the federal law term "Indian country" to define tribal lands. END*

*Cannabis documents referenced:*

**042.005**

Comment text: Tribal lands. Both the General Order and the Policy make repeated use of the phrase "Indian country" in referencing tribal lands. Not only does this expression lack legal precision, it is sometimes considered pejorative. Alternative wording is needed. END

**Streamline Solutions**

**Cost of compliance (CS)**

**CS-01**

**Summary comment: The proposed requirements are too expensive to implement, especially for smaller farms. END**

*Summary response: The State Water Board's statutory mandate is protection of water quality. However, the State Water Board is aware of the costs of compliance imposed on cultivators and balances the requirements with the need to protect water quality. The cost of compliance is a function of the site specific conditions. Sites located a suitable distance from a water body on relatively level terrain are not required to implement a large number of BPTC measures. Sites located in close proximity to a water body or on a sloped property, are a higher threat to water quality and therefore are subject to additional BPTC measure requirements. Similarly, larger cultivation sites are an inherently higher threat to water quality and have additional requirements imposed upon them. For those facilities that cannot comply with the applicable BPTC measures, a schedule to achieve compliance can be obtained from the Regional Water Board. END*

*Cannabis documents referenced: Policy: pg 13, par 2, Item c; Policy: pg 15, par 4; Order: pg 3, Finding 7.c; Order: pg 5, Finding 13; Policy: pg 17, par 2; Policy: pg 22, par 5; Att A: Sec 1, pg 15, Item 31; Att A: Sec 1, pg 16, Item 36, fn 3; Att A: Sec 5, pg 70, par 6; Staff rpt: pg 71, par 4; Staff rpt: pg 72, par 3; Order: pg 14, Finding 42.a; Order: pg 21, C.3.a; Order: Att D, pg D-3, Item 5.4; Order: Att D, pg D-4, par 2; Order: Att D, pg D-9, par 2; Order: Att D, pg D-10, Item 6.1*

**048.003**

Comment text: This order does not provide a viable compliance option for most small farmers due to the cost. If implemented as is it will result in devastating economic impacts for our and other northern California counties. Please consider developing a subset within Tier 1 that develops a compliance track for cottage farmers with disturbed areas of under 10,000 square feet that is attainable and affordable, and does not require 'Qualified Professionals' development of the various plans. END

**048.007**

Comment text: The lack of flexibility to achieve the protections beyond the means identified in Attachment A will result in a significant portion of north coast growers not qualifying for coverage. The existing cultivators that are pursuing legal cultivation will be squeezed out after significant investment over the past two years. END

**048.008**

Comment text: Qualified professionals are required in numerous instances and those should be carefully reviewed to determine if necessary considering the cost. By shifting from the Regional Order which facilitates "self- enrollment" without the need for qualified professional participation at most stages, the State Order in essence creates an incredibly complex and technical approach that requires costly consultants to perform. END

**Flow requirements, narrative (FR)**

**FR-03**

**Summary comment: CDFW should determine the forbearance period on a case by case basis END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The California Department of Fish and Wildlife (CDFW) may, under its own authority, require a forbearance period that is consistent with or different than the forbearance requirements in the State Water Board's Policy based on its assessment of what is protective of fish and wildlife. The State Water Board, under its authority, has determined that a forbearance period is needed in order to develop a statewide policy that is protective of water quality and designated beneficial uses. The establishment of a forbearance period is common in the State Water Board's administration of water rights. Examples include forbearance requirements in water right permits and licenses, in response to a fully appropriated stream declaration, and as part of the Policy for Maintaining Instream Flows in Northern California Coastal Streams. As stated in the Policy, in the event of duplicate or conflicting requirements, the most stringent requirements shall apply. END*

*Cannabis documents referenced:*

#### 048.004

Comment text: The General Order Instream Flow Requirements provide that Cannabis Cultivators shall not divert surface water for cannabis cultivation activities any time from April 1 through October 31, unless water is diverted from storage in compliance with Narrative Flow Requirement 4. The requirement is a "one-size-fits-all" that does not appear to take into account local factors such as size of watershed, density of cannabis cultivation, size of cultivation, or the specific impacts of a given cultivation. ... yet such a rigid forbearance rule will also cause unnecessary significant economic hardship,...Many cultivators cannot install storage facilities sufficient to sustain cultivation for such an extended period (April 1 to November). Further, in many cases, the work to install storage facilities will have a greater negative impact on the environment than would the diversion. Pursuant to Fish and Game Code sections 1602 and 1603, all cultivators who divert surface water for their operations are already required to obtain permission from CDFW through the LSA program. The LSA program provides CDFW with a powerful tool to control the amount, rate, and timing of any diversion to protect environmental values. Plus, CDFW can tailor the requirements for each LSA to the specific environmental needs of each site. I recommend that the forbearance period not be written into regulations, but be determined on a case-by-case basis through CDFW consultation under the LSA program. END

#### WR-06

**Summary comment: Cannabis should be treated like other agricultural crops and existing water rights should apply. END**

*Summary response: Water Code Section 13149 directs the State Water Board to "adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. The principles and guidelines adopted under this section may include, but are not limited to, instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. The principles and guidelines may include requirements that apply to groundwater extractions where the board determines those requirements are reasonably necessary for purposes of this section." Additionally, Water Code Section 13149 states "The principles and guidelines, including the interim principles and guidelines, shall include measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation." The State Water Board must abide by the Water Code and is therefore unable to treat cannabis cultivation like other agriculture activities that use water diversions. In particular, the Legislature has expressly mandated that the State Water Board regulate cannabis cultivation in a specific and distinct from the requirements for traditional agriculture. See also response WD-01. END*

*Cannabis documents referenced: Water Code Section 13149*

#### 048.005

Comment text: The General Order Instream Flow Requirements provide that Cannabis Cultivators shall not divert surface water for cannabis cultivation activities any time from April 1 through October 31, unless water is diverted from storage in compliance with Narrative Flow Requirement 4. The forbearance period should not apply to existing appropriative rights holders who seek to convert all or a portion of their existing agriculture to cannabis. The Staff Report justifies its recommendation for universal forbearance on the conclusion that increased diversions during low flow periods "greatly affects the quantity and quality of water available, negatively impacts designated beneficial uses, and threatens the survival of endangered salmon, steelhead, and other aquatic life." While this is generally the case, it does not apply to those who have pre-existing water rights. Pre-existing water right holders are bound by the terms of their licenses, which define the time, rate, and extent of their diversions. Any increase in diversion would represent a violation of the terms of their license and render the diverter subject to enforcement or revocation. Forcing a water right holder to institute forbearance on diversions for cannabis will also result in the absurd situation where they are entitled to continue to divert through the low flow periods for conventional purposes such as conventional crops or cattle, but must forbear on the portion of their right that is used only for cannabis. If they choose not to cultivate, they could continue to divert the full amount of their right with no forbearance. Many water rights in the state are designed to satisfy irrigation needs during the summer months. The forbearance period would make these rights unusable for cannabis, essentially depriving cultivators of a property right with no scientifically justifiable public trust benefit. As a legal crop, cannabis irrigation is a reasonable and beneficial use of water. Treating it differently from other crops in the context of pre-existing water rights, where its cultivation will not increase the demand on water resources, is arbitrary and capricious, will have significant economic impacts on both property owners and government, and will not provide environmental benefits. I strongly recommend that pre-existing appropriative and pre-1914 rights are treated as exceptions to the forbearance rule. END

#### Grandfather coverage (GR)

##### GR-01

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*

*END*

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*Cannabis documents referenced:*

#### **048.001**

*Comment text: The prior investments made towards compliance by North Coast farmers need to be honored and validated by allowing existing enrollees in the North Coast program to continue working within their developed Water Resources Protection Plans. I request that you allow farmers that have enrolled with a Regional Board prior to the start of the Statewide Order to continue to work under the existing order, and thus be "grandfathered in". END*

#### **GR-02**

*Summary comment: North Coast cultivators have been encouraged to get to the "front of the line" with regulatory planning and permitting. Over the past two years, investment has been made in property-wide plans in consultation with professionals and agency staff. The new statewide Order needs to have a mechanism for incorporating farms already enrolled in the Regional Order and must allow farmers to continue operating with their established Water Resources Protection Plans and timelines for remediation.*

*END*

*Summary response: The Cannabis Policy and General Order have a process for existing enrollees to transition to the General Order. Existing enrollees are allowed to continue operating under their existing authorization until July 1, 2019. They may transition earlier if they prefer.*

*The Cannabis General Order requires a Site Management Plan, which is a report similar to the Water Resource Protection Plan that is required by the North Coast Regional Water Board Conditional Waiver of WDRs. Development of the Site Management Plan should involve relatively minor revision to the Water Resource Protection Plan to comply with the Cannabis General Order.*

*If at the time of transitioning coverage to the Cannabis General Order, the cultivators with an existing Water Resources Protection Plan have not completed its remediation work, the cultivators should submit the Site Management Plan (which should be very similar to their Water Resources Protection Plans) and include any previously agreed upon schedule for site improvements. Because the Regional Water Board previously approved the schedule, the update should be a relative minor process. END*

*Cannabis documents referenced: Policy Section 5 Site Management Plan pg 69; Order Attachment D.*

#### **048.002**

*Comment text: The new State Order needs to have a mechanism for incorporating farms already enrolled in the Regional Order and allow farmers to continue operating with their established Water Resources Protection Plans and timelines for remediation. END*

#### **Setbacks (SB)**

##### **SB-01**

*Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END*

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END*

Cannabis documents referenced:

**048.006**

Comment text: While the riparian protection minimums are protective, and there is a process for a compliance schedule for achieving the minimums, there is no process for variance which would allow for alternative setback if warranted (e.g., hydrologic divides, dry farming, long established land uses). END

### The Nature Conservancy

#### Flow requirements, numeric (FN)

**FN-01**

**Summary comment: We recommend that the Board evaluate model performance and/or calculate error bounds around long term means and use the results to inform implementation of the Tessmann approach. In general, we believe it is necessary to evaluate model performance to assess how well the model predicts long term mean monthly and annual flows. END**

*Summary response: The State Water Board determined that the best available flow dataset for statewide instream flow development was the predicted historical flow data sourced from a flow modeling effort conducted by the United States Geological Survey (USGS) in cooperation with The Nature Conservancy (TNC) and Trout Unlimited. The USGS flow modeling effort developed empirical flow models that predicted the natural (unaffected by land use or water management) monthly streamflows from 1950 to 2012 for the majority of the USGS National Hydrologic Database stream reaches in California (USGS streamflow dataset). (Carlisle, et. al. 2016) The State Water Board agrees with the commenter that it is appropriate to evaluate model performance and/or calculate error bounds around long term means to assess how well the model predicts long term mean monthly and annual flows. The results of this analysis have been added to the Cannabis Policy Staff Report. END*

Cannabis documents referenced:

**068.001**

Comment text: We recommend that the Board evaluate model performance and/or calculate error bounds around long term means and use the results to inform implementation of the Tessmann approach. In general, we believe it is necessary to evaluate model performance to assess how well the model predicts long term mean monthly and annual flows. END

### Thomas D Hicks, Attorney at Law

#### CEQA, permits (CQ)

**CQ-05**

**Summary comment: The State and Regional Board are asked to clarify how an individual can make an independent determination as to whether their fully contained spring is or is not a "water of the state" for purposes of water diversion pursuant to water quality jurisdiction. END**

*Summary response: Under Water Code section 13050, subdivision (e), "waters of the state" means "any surface water or groundwater, including saline waters, within the boundaries of the state." Unlike federal Clean Water Act jurisdiction, the State and Regional Water Boards' water quality jurisdiction under the Porter-Cologne Water Quality Control Act is not limited to waterbodies above a minimum threshold of size or significance.*

*Springs that do not flow off the property during any time of year in the absence of any diversions do not require an appropriate water right permit, provided that the spring also does not contribute flows to a surface water through a subsurface connection. The Policy has been revised to clarify that the State Water Board may, on a case-by-case basis, allow a cannabis cultivator to continue diverting from a spring during the surface water dry season forbearance period and surface water wet season diversion period if the State Water Board determines that the spring does not flow off the property by surface or subterranean (subsurface) means in the absence of diversions at any time of the year during all water year types. Such authorization shall only be effective once the cultivator receives written confirmation from the State Water Board.*

*END*

Cannabis documents referenced:

**073.011**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: The State and Regional Board are asked to clarify how an individual can make an independent determination as to whether their fully contained spring is or is not a "water of the state" for purposes of water diversion pursuant to water quality jurisdiction. END

#### Flow requirements, narrative (FR)

##### FR-03

**Summary comment: CDFW should determine the forbearance period on a case by case basis END**

*Summary response: The California Department of Fish and Wildlife (CDFW) may, under its own authority, require a forbearance period that is consistent with or different than the forbearance requirements in the State Water Board's Policy based on its assessment of what is protective of fish and wildlife. The State Water Board, under its authority, has determined that a forbearance period is needed in order to develop a statewide policy that is protective of water quality and designated beneficial uses. The establishment of a forbearance period is common in the State Water Board's administration of water rights. Examples include forbearance requirements in water right permits and licenses, in response to a fully appropriated stream declaration, and as part of the Policy for Maintaining Instream Flows in Northern California Coastal Streams. As stated in the Policy, in the event of duplicate or conflicting requirements, the most stringent requirements shall apply. END*

*Cannabis documents referenced:*

##### 073.001

Comment text: 1. The forbearance requirement is inflexible and agnostic to local factors. The Cannabis Cultivation Policy Staff Report ("Staff Report") states that increased diversion during normal irrigation months "greatly affects the quantity and quality of water available, negatively impacts designated beneficial uses, and threatens the survival of endangered salmon, steelhead, and other aquatic life." While this is no doubt true in many cases, it is not true where sufficient water is available to satisfy both irrigation and public trust needs. The Staff Report even acknowledges that while these impacts "may occur" from current and anticipated increased levels of cannabis cultivation, they are not certain. Applying the aggressive forbearance period universally will certainly provide important protections for fish and wildlife, yet such a rigid forbearance rule will also cause unnecessary significant economic hardship, including eliminating otherwise viable cultivation operations. It may also result in more negative impact to the environment. Many cultivators cannot install storage facilities sufficient to sustain cultivation for such an extended period (April 1 to November). Further, in many cases, the work to install storage facilities will have a greater negative impact on the environment than would the diversion. Pursuant to Fish and Game Code sections 1602 and 1603, all cultivators who divert surface water for their operations are already required to obtain permission from CDFW through the LSA program. The LSA program provides CDFW with a powerful tool to control the amount, rate, and timing of any diversion to protect environmental values. Plus, CDFW can tailor the requirements for each LSA to the specific environmental needs of each site. We recommend that the forbearance period not be written into regulations, but be determined on a case-by-case basis through CDFW consultation under the LSA program.

END

##### FR-14

**Summary comment: General concerns regarding the New England Aquatic Base Flow Standard, Tessman, and the way in which groundwater is regulated under the Policy. END**

*Summary response: Please see Attachment 1 for FR-14 Summary Response. END*

*Cannabis documents referenced:*

##### 073.003

Comment text: 3.G groundwater Forbearance

The General Order states that groundwater not under the direct influence of surface water may require forbearance if the SWRCB deems necessary. This represents a historic change of water policy in the state, and yet such a dramatic shift is supported by a glaring lack of detail, legal, or scientific justification by Staff. Requiring forbearance in the absence of clear hydrological justification could lead to a takings claim.

It is generally recognized that all water sources are hydrologically connected, but that connectivity works on a different timescale than surface water. Hydrologically connected aquifers may influence streamflow the same season as the withdrawal, and thus have significant impacts, or their impacts may occur months, or years later, if at all.

The Staff Report says little about scientific justification for groundwater that is influenced by surface water contributing to base flows. The SWRCB uses the New England Aquatic Base Flow (ABF) methodology to determine when groundwater forbearance will apply. This method is agnostic to the temporal connectivity issue, which should be most relevant.

The New England Base Flow Method, used to determine need for groundwater forbearance, does not address connectivity, is not appropriate for heavily allocated watershed nor for rivers with dams. It is also based on data collected in New England, with a very different topography and hydrogeology from most areas in California. The New England Method's blind use by the SWRCB may result in groundwater forbearance without any understanding of whether, to what degree, or when that forbearance will even increase stream flow.

END

##### WR-06

**Summary comment: Cannabis should be treated like other agricultural crops and existing water rights should apply. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: Water Code Section 13149 directs the State Water Board to “adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. The principles and guidelines adopted under this section may include, but are not limited to, instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. The principles and guidelines may include requirements that apply to groundwater extractions where the board determines those requirements are reasonably necessary for purposes of this section.” Additionally, Water Code Section 13149 states “The principles and guidelines, including the interim principles and guidelines, shall include measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation.” The State Water Board must abide by the Water Code and is therefore unable to treat cannabis cultivation like other agriculture activities that use water diversions. In particular, the Legislature has expressly mandated that the State Water Board regulate cannabis cultivation in a specific and distinct from the requirements for traditional agriculture. See also response WD-01. END*

*Cannabis documents referenced: Water Code Section 13149*

#### 073.002

Comment text: 2. An appropriative water right should not be subject to forbearance under the General Order.

The General Orders states:

“All water diversions for cannabis cultivation from a surface stream, groundwater diversions from a subterranean stream flowing through a known and definite channel, or other surface waterbody are subject to the surface water forbearance period and instream flow Requirements...”

This rule applies to both new SIURs and pre-existing appropriative and pre-1914 rights. Applying this rule to pre-existing rights holders is not only unreasonable, it will cause unnecessary significant economic hardship, including eliminating otherwise viable cultivation operations. It may also result in more negative impact to the environment.

The Staff Report justifies its recommendation for universal forbearance on the conclusion that increased diversions during low flow periods “greatly affects the quantity and quality of water available, negatively impacts designated beneficial uses, and threatens the survival of endangered salmon, steelhead, and other aquatic life.” While this is generally the case, it does not apply to those who have pre-existing water rights. Pre-existing water right holders are bound by the terms of their licenses, which define the time, rate, and extent of their diversions. Any increase in diversion would represent a violation of the terms of their license and render the diverter subject to enforcement or revocation.

Forcing a water right holder to institute forbearance on diversions for cannabis will also result in the absurd situation where they are entitled to continue to divert through the low flow periods for conventional purposes such as conventional crops or cattle, but must forbear on the portion of their right that is used only for cannabis. If they choose not to cultivate, they could continue to divert the full amount of their right with no forbearance.

Many water rights in the state are designed to satisfy irrigation needs during the summer months. The forbearance period would make these rights unusable for cannabis, essentially depriving cultivators of a property right with no scientifically justifiable public trust benefit.

Would be cultivators with pre-existing rights must construct storage, and potentially seek additional water rights with the resulting financial and environmental impacts – without actually addressing the Staff Report’s concerns regarding increased diversions.

As a legal crop, cannabis irrigation is a reasonable and beneficial use of water. Treating it differently from other crops in the context of pre-existing water rights, where its cultivation will not increase the demand on water resources, is arbitrary and capricious, will have significant economic impacts on both property owners and government, and will not provide environmental benefits.

We strongly recommend that pre-existing appropriative and pre-1914 rights be treated as exceptions to the forbearance rule.

FND

#### Water rights (WR)

##### WR-07

**Summary comment: The State Board and DFW are asked to clarify whether a fully contained spring is now administratively considered the same as a river, stream, or lake and requires a LSA? END**

*Summary response: The scope of waterbodies for which a Lake or Streambed Alteration Agreement (LSAA) is legally required is within the California Department of Fish and Wildlife’s expertise and regulatory jurisdiction. The State Water Board cannot offer a definitive opinion on the extent to which development and/or diversion from a spring may require a LSA Agreement. END*

*Cannabis documents referenced:*

#### 073.010

Comment text: The State Board and DFW are asked to clarify whether a fully contained spring is now administratively considered the same as a river, stream, or lake and requires a LSA? END

##### WR-12

**Summary comment: Requesting information regarding water diversion and use related to cannabis cultivation in North Coast counties. See Comment 73.007 for more details END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The State Water Board is responsible for water rights, water quality, and drinking water. The State Water Board does not track land ownership outside of these functions. The total number of landowners or real property parcels in North Coast counties can be found by contacting each county's assessor's office or subscribing to an online resource, such as ParcelQuest.*

*As of September 15, 2017, there are 1088 cannabis cultivators enrolled in the North Coast Regional Water Quality Control Board's (North Coast Region) Waiver of Waste Discharge for Cannabis Cultivation (Order No. 2015-0023) and approximately 2,000 applications in process. More information on the North Coast Region's cannabis program is available at:*

*[http://www.waterboards.ca.gov/northcoast/water\\_issues/programs/cannabis/](http://www.waterboards.ca.gov/northcoast/water_issues/programs/cannabis/)*

*An additional source of general information on commercial cannabis cultivation is the California Department of Food and Agriculture's voluntary survey results on medical commercial cannabis cultivation and license types by county.*

*The survey was conducted in August 2016 and the results are available at:*

*<https://static.cdfa.ca.gov/MCCP/document/2016%20Licensing%20Survey%20Results.pdf>*

*The interim principles and guidelines will apply to all owners, operators, tenants, or lessees of any property associated with cannabis cultivation. As previously stated, the State Water Board does not track parcel information independently from its water resources programs, and therefore cannot specify the total number of parcels in the North Coast associated with cannabis cultivation.*

*The North Coast Region is collecting general water use information from applicants who enroll in the Waiver of Waste Discharge for Cannabis Cultivation. The information collected is currently only viewable on an application by application basis and has not been collectively analyzed.*

*The Division of Water Rights Electronic Water Rights Information Management System (eWRIMS) database provides up-to-date information regarding the State Water Board's water right records, and can be used to search for appropriative, riparian, and pre-1914 appropriative water right records that include irrigation as a use type. The data are not readily searchable by surface water only and include diversions from subterranean streams, which may or may not be hydrologically connected, and springs which may or may not be "fully contained." The eWRIMS data are publically available and interested parties may conduct a detailed assessment of each water right source. The eWRIMS database is available online at:*

*[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/ewrims/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/)*

*The eWRIMS database is not currently searchable for cannabis cultivation. Questions regarding cannabis cultivation were added to the annual reporting forms on January 1, 2017. The North Coast Region is collecting general water source information from applicants who enroll in the Waiver of Waste Discharge for Cannabis Cultivation. The information collected is currently only viewable online on an application by application basis and has not been collectively analyzed.*

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*Better information will be available in the future as a result of ongoing efforts related to collecting data through water rights reporting, the cannabis cultivation waste discharge requirement program, and the Cannabis documents referenced:*

**073.007**



## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: The State Board and other agencies are asked to provide their most current information related to the following:

a. Total Impact

- i. Total number of landowners or real property parcels in North Coast counties;
  - ii. Total number of landowners or parcels in North Coast that will potentially be impacted by the new principles and guidelines;
- b. Farming in General
- i. Total number of landowners and parcels that rely on surface flow as the basis of water supply for their farming operations.
  - ii. Total number of landowners and parcels that rely on hydrologically connected groundwater as the basis of water supply for their farming operations.
  - iii. Total number of landowners and parcels that rely on fully contained springs as the basis of water supply for their farming operations.

c. Cannabis Farming

- i. Total number of landowners and parcels that rely on surface flow as the basis of water supply for their farming operations.
- ii. Total number of landowners and parcels that rely on hydrologically connected groundwater as the basis of water supply for their farming operations.
- iii. Total number of landowners and parcels that rely on fully contained springs as the basis of water supply for their farming operations.

d. Farming Water

- i. Total estimated amount of water (gallons and/or acre feet) diverted from surface streams pursuant to riparian or appropriative rights.
- ii. Total estimated amount of water (gallons and/or acre feet) pumped from hydrologically connected groundwater.
- iii. Total estimated amount of water (gallons and/or acre feet) drawn from fully contained springs.

e. Cannabis Water

- i. Total estimated amount of water (gallons and/or acre feet) diverted from surface streams pursuant to riparian or appropriative rights for cannabis.
- ii. Total estimated amount of water (gallons and/or acre feet) pumped from hydrologically connected groundwater for cannabis.
- iii. Total estimated amount of water (gallons and/or acre feet) drawn from fully contained springs for cannabis.

FND

#### WR-13

**Summary comment: Seeking additional information/clarification regarding the State Water Board's jurisdiction over springs. END**

*Summary response: Under SB 837, signed into law June 27, 2016, the California Legislature mandated that the State Water Board adopt principles and guidelines to "protect springs, wetlands, and aquatic habitat" from the negative impacts of cannabis cultivation. (Wat. Code, § 13149, subd. (a); see also Stats. 2016, ch. 32, § 104.) This statutory mandate does not distinguish between waterbodies that are within the State Water Board's water right permitting authority and those that are not. Accordingly, the Policy does not make the distinction. Unless a waterbody is exempt from a particular requirement under the terms of the Policy, that waterbody remains subject to all applicable requirements in the Policy, as required by section 13149 of the Water Code.*

*The comment conflates the State Water Board's water right permitting authority in with its overall regulatory authority over waters of the state. Under the Porter-Cologne Water Quality Control Act, the State Water Board's planning authority over waters of the state is not limited to the scope of its water right permitting authority. Senate Bill 837 (codified as Water Code section 13149) directs the State Water Board to adopt this Policy in the form of a state policy for water quality control. (See Wat. Code, § 13142, et seq.) The Water Code defines "water quality control" broadly to mean "the regulation of any activity or factor which may affect the quality of the water of the state . . ." (Id. § 13050, subd. (i) [emphasis added].) "Water of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." (Id. subd. (e).) The Water Code further defines "water quality" broadly to include biological or physical characteristics. (Id. subd. (g)). Under these authorities, a policy for water quality control can apply to diversions that otherwise would not be subject to the State Water Board's water right permitting authority.*

*The State Water Board has determined that all diversions for cannabis cultivation, even those that historically have not been required to file statements of water diversion and use per section 5101, subdivision (a) of the Water Code, may affect the quality of waters of the state. Many springs support their own aquatic and riparian habitats that may be threatened by excessive diversions. As already noted, the Legislature has expressly directed the State Water Board to adopt a policy for water quality control to ensure that cannabis cultivation does not negatively impact such habitats. Pursuant to the above-referenced authorities and findings in the Policy and Staff Report, the State Water Board included all waters of the state within the scope of this Policy, including springs that never flow off the property in the absence of diversions.*

*Finally, the State Water Board's authority to prevent waste, unreasonable use, unreasonable methods of use, unreasonable methods of diversion, and harm to public trust resources supports including all waters of the state within the scope of the Policy's diversion requirements, even in cases when a spring never flows off the property in the absence of diversions. Article X, section 2 of the California Constitution provides that there can be no right to the waste or unreasonable use of water. Water Code section 275 authorizes the State Water Board to conduct necessary proceedings to prevent waste and unreasonable use. That authorization is not limited to enforcement proceedings; it includes any State Water Board adjudicatory or regulatory functions otherwise authorized by law, including but not limited to water resources planning under the Porter-Cologne Water Quality Control Act. (See Light v. State Water Resources Control Board (2014) 226 Cal.App.4th 1463, 1482-83, 1484.) Further, the State Water Board "has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible." (State Water Resources Control Bd. Cases (2006) 136 Cal.App.4th 674, 777 [quoting National Audubon Society v. Superior Court (1983) 33 Cal.3d 419, 446].) As stated in the Policy and the Staff Report, in light of limited available water supply and the need for water to protect public trust resources, the State Water Board has determined that it is a waste and unreasonable use of water under Article X, section 2 of the California Constitution to: 1) divert or use water for cannabis cultivation in a manner inconsistent with this Policy, regardless of water right seniority; 2) to divert or use water for cannabis cultivation, where prohibited by State law, this Policy, on public lands, or on tribal land without authorization; and 3) overwater cannabis plants and cause runoff. These findings rightly apply to all waters of the state, not merely waters that historically have been within the State Water Board's water right permitting jurisdiction.*

END

Cannabis documents referenced:

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**073.004**

Comment text: 4.Expansion of Jurisdiction

Finally, we want to raise again the issue of State Board jurisdiction over historically non-jurisdictional water sources such as disconnected springs, groundwater wells, wetlands, or offstream ponds. Hicks Law submitted a letter to the Board on October 7, 2016 explaining our concerns. The Board responded on March 27, 2017 without directly answering any of our questions or comments, which we documented in a follow up letter to the Board dated April 4, 2017. We attach these letters for your review.  
END

**073.005**

Comment text: The State Board and DFW are asked to articulate a principle or guideline that provides a clear and objective standard for property owners and their consultants to follow with respect to jurisdictional vs. non-jurisdictional springs, wetlands, and aquatic habitat. END

**073.006**

Comment text: If the State Board and DFW intend to expand their jurisdiction over currently non-jurisdictional springs and water sources, both are asked to explain their statutory or other legal authority supporting this expansion. END

**073.008**

Comment text: The State Board is asked to clarify to what extent that it interprets any existing or new authorities to expressly override the existing law of fully contained springs. END

**073.009**

Comment text: The State Board is asked to address the apparent jurisdictional exemption for fully contained springs from filing Statements of Water Diversion and Use found in the same legislation that it cites as a basis of extension of authority over all springs. END

**Trinity Alps Collective**

**Grandfather coverage (GR)**

**GR-01**

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*

*END*

*Cannabis documents referenced:*

**011.001**

Comment text: I am writing this letter in response to receiving your letter for public comment. I have spent enormous amounts of money, time, effort and hard manual work into getting my property compliant for the regional water board order.

So I am begging you to Grandfather my property into the state water board resource plan, PLEASE! It will destroy the small farmer if not. I feel people who put everything into compliance early should not be punished. END

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**Trinity Sungrown**

**Grandfather coverage (GR)**

**GR-01**

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*

*END*

*Cannabis documents referenced:*

**009.001**

Comment text: I am a Licensed cannabis cultivator in Trinity county and would like to ask if the water board could grandfather those already enrolled in the district 1 ordinance for another five years before asking us to adopt the new calif water board regs. END

**Water rights (WR)**

**WR-06**

**Summary comment: Cannabis should be treated like other agricultural crops and existing water rights should apply. END**

*Summary response: Water Code Section 13149 directs the State Water Board to "adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. The principles and guidelines adopted under this section may include, but are not limited to, instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of barriers to fish passage. The principles and guidelines may include requirements that apply to groundwater extractions where the board determines those requirements are reasonably necessary for purposes of this section." Additionally, Water Code Section 13149 states "The principles and guidelines, including the interim principles and guidelines, shall include measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation." The State Water Board must abide by the Water Code and is therefore unable to treat cannabis cultivation like other agriculture activities that use water diversions. In particular, the Legislature has expressly mandated that the State Water Board regulate cannabis cultivation in a specific and distinct from the requirements for traditional agriculture. See also response WD-01. END*

*Cannabis documents referenced: Water Code Section 13149*

**010.001**

Comment text: I would like to ask that Pre-1914 water rights for Ag uses be exempt from the forbearance period. It seems to us that the state has already designated these waters for AG uses and are exempt from the ordinance that is being executed on the other farms. END

**Trinity Valley Consulting Engineers, Inc.**

**Setbacks (SB)**

**SB-01**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: I would like to implore the water board to allow affected individuals to reduce their setback to streams and watercourses if they provide engineered and effective drainage solutions, or if their drainage naturally flows away from the channel while still being within the setbacks. Current regulations can sometimes cause farmers who would otherwise not be a threat to water quality to believe that their best course of action is to move to a different location on their parcel, at which point they will engage in deforestation and grading activities. Such development can be a net negative to environmental quality, and I would advise the water board to adopt regulations that allow some people, where appropriate, to obtain reductions in stream or wetland setback requirements. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality. As a result a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. END**

*Summary response: The Cannabis Policy Staff Report has been updated to include additional information regarding setbacks, including information to support the use of universal (rather than site-specific) setbacks due to the statewide nature of the Policy. Additionally, the watercourse definitions and setbacks in the Cannabis Policy have been updated to more closely match the Forest Practice Rules and provide one (rather than two) setback requirement for each watercourse type. The Policy and General Order have also been updated to address the numerous concerns over riparian setback distance requirements and the effort of enrollees under existing North Coast Regional Water Board and Central Valley Regional Water Board waste discharge programs in two ways. The first change is an extension of time for existing North Coast Regional Water Board and Central Valley Regional Water Board enrollees to transition into coverage under the statewide Cannabis General Order. Instead of transition by July 1, 2018, existing enrollees are required to transition by July 1, 2019, allowing an extra year for existing, enrolled cannabis cultivators to adopt to modified requirements. The second is that existing enrollees with facilities permitted prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality. Additionally, the Cannabis Policy and General Order allow a cannabis cultivator to obtain an individual site-specific waste discharge requirements from the appropriate Regional Water Board with requirements that are inconsistent with the setbacks in the Policy if the Regional Water Board Executive Officer determines that the site-specific waste discharge requirements contain sufficient requirements to be protective of water quality. END*

Cannabis documents referenced:

077.001

Comment text: I am concerned with the proposed new riparian setback requirements that have been presented within the draft Cannabis General Order. These setback requirements are considerably different than what is presently existing, where efforts have been made to follow existing required setbacks and landings and ponds have been constructed and greenhouses installed...

I suggest that the draft Cannabis General Order include language that is similar to the NCRWQCB order (Pg. 17, footnote):

"Alternative site-specific riparian buffers that are equally protective of water quality may be necessary to accommodate existing permanent structures or other types of structures that cannot be relocated"

END

### Whispering Pines Farm

#### Grandfather coverage (GR)

GR-01

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*

END

Cannabis documents referenced:

005.001

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

Comment text: I'm respectfully requesting that you allow farms that have already enrolled in the ncrwqcb to be grandfathered in and allow us a grace period of up to 5 years while you come up with permanent regulations. END

#### Winter, Larry

##### Application for coverage (AP)

###### AP-11

**Summary comment: Cottage farmers should be exempt from regulations if they implement best management practices. END**

*Summary response: The commenter does not state why cottage farmers should not be required to register or enroll. Type 1c Specialty Cottage sites can include up to 25 mature plants – significantly more than the 6 plants allowed under the personal use exemption. The potential water quality degradation from 1 sites this size, especially those that are not required to comply with the best practicable treatment or control measures can be significant. Therefore, it is appropriate for such sites to be required to comply with the Cannabis Policy and General Order. Furthermore, all commercial cultivation activities (commodities that are destined for the medical or recreational marketplace) are required to register or enroll under the Cannabis General Order. Compliance with the Cannabis General Order is required for a cultivator to obtain a CDFR cultivation license. For non-commercial activities, the Cannabis General Order provides personal use exemptions for medical or recreational cultivation activities. Sites that have a total disturbed area under 1,000 square feet and qualify for a personal use exemption are not required to register or enroll under the Cannabis General Order. All cannabis cultivators, including those that qualify for the personal use exemption, are required to comply with the BPTC measures contained in the Cannabis Policy Attachment A. A change was not made in response to the comment. END*

*Cannabis documents referenced: Policy: pg 13, par 3, 5; Policy: pg 14, par 8; Policy: pg 15, par 8; Policy: pg 18, par 2-3; Order: pg 2, F7.a; Order: pg 3, F7.c; Order: pg 4, F10, 12; Order: pg 5, F13; Order: pg 12, F41.a; Order: pg 13, F41.d*

**061.001**

Comment text: Please excuse Cottage farmers from your regulations if we use BMPs. END

#### Wiyot Tribe

##### Regulatory structure (RS)

###### AP-01

**Summary comment: The land owner should be identified in the application and should also be required sign the application. END**

*Summary response: The application has been designed to collect land owner information and contact information. Land owners will be named as responsible parties and will be notified when authorization to cultivate cannabis is provided to an applicant. The Cannabis Policy requires that cannabis cultivators not commit trespass and notes that nothing in the Policy "shall be construed to authorize cannabis cultivation activities on land not owned by the cannabis cultivator without the express written permission of the land owner." END*

*Cannabis documents referenced: Att A: Overview, pg 5, Item 12; Att A: Sec 1, pg 11, Item 16; Att A: Sec 1, pg 15, Item 35*

**059.006**

Comment text: General Comments. Item #19:  
7.The policy needs to add language consistent with state laws concerning penalties for violations. END

#### Tribal, cultural (TC)

###### TC-04

**Summary comment: The meaning of the term "CHRIS potential discovery" is unknown. California Historical Resources Information System (CHRIS) records searches conducted by or for qualified archaeologists (or other qualified professionals) contain information about known recorded cultural resources - including, but not limited to, "historical resources" as defined in CEQA, and including, but not limited to, archaeological cultural resources.**

**These searches may be used to assess the likelihood of unrecorded cultural resources in the vicinity of the search area as well. As such, combining "CHRIS" and "potential discovery" into a single term is unclear. Please define the term "CHRIS potential discovery" or rewrite the language so that the requirement is understandable.**

**END**

*Summary response: The State Water Board thanks the California Department of Parks and Recreation, Blue Lake Rancheria, and the Wiyot Tribe for their comments and expertise. To address these issues, the draft order will be amended to replace the term "CHRIS potential discovery" with the term "CHRIS positive result." END*

*Cannabis documents referenced:*

**059.003**

Comment text: General Comments. Item #19:  
3.A "CHRIS potential discovery" is not in common usage in historic preservation as practiced in the state of California under a variety of state and federal laws, policies and guidelines. The CHRIS maintains records of places that are known (although resource conditions may change over time). END

#### TC-08

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

**Summary comment: It is recommended that policy language note that ethnobotanical communities or culturally significant vegetation types comprise part of the cultural landscape and are thus protected as Tribal Cultural Resource. It should be noted that ethnobotanical resources and sites may not appear in the CHRIS record search, and that the "Qualified Biologist" or "Professional Archaeologist" assess cultivation areas and other areas planned for disturbance for the presence of ethnobotanical communities, especially if a CHRIS record search confirms that a tribal cultural site is within the application parcel. This may also require consultation with tribal natural resource department staff and botanists/ethnobotanists in addition to cultural resource staff.**

**END**

*Summary response: The State Water Board thanks the Wiyot Tribe Natural Resources Department for its expertise in understanding the variety of tribal cultural resources that may be negatively affected by cannabis cultivation. Attachment A will be amended to require a search of the Sacred Lands Inventory that is maintained by the Native American Heritage Commission prior to land disturbance for new or expanded cannabis cultivation activities. Accordingly, California Native American tribes can achieve protection for known assemblages of ethnobotanical plant communities and culturally significant vegetation types through the Sacred Lands Inventory. Additional procedures for protecting resources listed on the Sacred Lands Inventory from the negative impacts of cannabis cultivation are described below.*

*In the event of a Sacred Lands Inventory positive result, the cannabis cultivator will be required to consult with culturally affiliated California Native American tribes, develop appropriate mitigation and conservation measures, submit proposed mitigation and conservation measures to the appropriate person(s) (Deputy Director for the Division of Water Rights or Executive Officer for the appropriate Regional Water Quality Control Board, as applicable) for written approval. The Deputy Director or Executive Officer, as applicable, has the authority to require all appropriate measures necessary to conserve archeological resources and tribal cultural resources listed on the Sacred Lands Inventory, including but not limited to Native American monitoring, preservation in place, and archeological data recovery. The cannabis cultivator shall also provide a copy of the final proposed mitigation and conservation measures to any culturally affiliated California Native American tribes identified by the Native American Heritage Commission. The Deputy Director or Executive Officer, as applicable, will carefully consider any comments or mitigation measure recommendations submitted by culturally affiliated California Native American tribes with the goal of conserving prehistoric archeological resources and tribal cultural resources with appropriate dignity.*

*In addition, terms 33 and 34 of the Cannabis Policy requires that cannabis cultivators avoid damage to riparian vegetation and oak woodlands, respectively. Terms 35 and 36 establish revegetation requirements.*

**END**

*Cannabis documents referenced:*

#### **058.001**

**Comment text: It is recommended that policy language note that ethnobotanical communities or culturally significant vegetation types comprise part of the cultural landscape and are thus protected as Tribal Cultural Resource. It should be noted that ethnobotanical resources and sites may not appear in the CHRIS record search, and that the "Qualified Biologist" or "Professional Archaeologist" assess cultivation areas and other areas planned for disturbance for the presence of ethnobotanical communities, especially if a CHRIS record search confirms that a tribal cultural site is within the application parcel. This may also require consultation with tribal natural resource department staff and botanists/ethnobotanists in addition to cultural resource staff. END**

#### **TC-09**

**Summary comment: In reference to items #11 and #14 which address the importance of re-vegetation with native species for erosion control and mitigation, it should be noted that as indicated in AB 52, that species used should be also culturally appropriate. For example, if a grassland, woodland, or hazelnut stand is modified or needs erosion control and requires re-vegetation, the species used should be both native and be culturally appropriate, in meaning that species removed are re-planted with the same species, and/or species found within the same vegetation community, while also trying to maximize species diversity in preparation for future changes the climate, including possible future changes in rainfall and temperature. END**

*Summary response: Term 33 of the cannabis policy requires that all exposed or disturbed land and access points within the stream and riparian setback with damaged vegetation shall be restored with regional native vegetation of similar native species. Terms 35 and 36 establish additional revegetation requirements. "Native" species is understood to include the same species, if native, or species found within the same native vegetation community.*

*See response to comment 58.001, above, for information on amendments to the draft Cannabis Policy that allow for additional protection of known assemblages of ethnobotanical plant communities and culturally significant vegetation types through the Sacred Lands Inventory maintained by the Native American Heritage Commission*

**END**

*Cannabis documents referenced:*

#### **058.002**

**Comment text: In reference to items #11 and #14 which address the importance of re-vegetation with native species for erosion control and mitigation, it should be noted that as indicated in AB 52, that species used should be also culturally appropriate. For example, if a grassland, woodland, or hazelnut stand is modified or needs erosion control and requires re-vegetation, the species used should be both native and be culturally appropriate, in meaning that species removed are re-planted with the same species, and/or species found within the same vegetation community, while also trying to maximize species diversity in preparation for future changes the climate, including possible future changes in rainfall and temperature. END**

#### **058.003**

**Comment text: Sticking with parcel appropriate species for re-vegetation also helps to maintain a property's natural hydrology and the ecological services that have evolved there over time. This point is addressed in item #33 for riparian area vegetation, but not for areas requiring native plant re-vegetation outside of riparian areas. END**

#### **TC-10**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

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**Summary comment: See Comment 59.001 END**

*Summary response: The State Water Board thanks Blue Lake Rancheria and the Wiyot Tribe for their expertise and recommendations. Attachment A will be amended to contain separate terms relating to a cannabis cultivator's obligations when archeological resources are inadvertently discovered and a cannabis cultivator's obligation to search available databases for information on tribal cultural resources and archeological resources prior to land disturbance activities for new or expanded cannabis cultivation activities. Both requirements will explicitly require cannabis cultivators to provide final proposed mitigation and conservation measures to culturally affiliated tribes identified by the Native American Heritage Commission. Attachment A will also be amended to explicitly state that culturally affiliated tribes may submit mitigation measure recommendations with their comments on a given cannabis cultivator's final proposal.*

*Attachment A will be further amended to require a search of the Sacred Lands Inventory that is maintained by the Native American Heritage Commission prior to land disturbance for new or expanded cannabis cultivation activities. This approach creates a process for cannabis cultivators to develop appropriate protective measures with California Native American tribes for the specific Native American cultural resources that may be affected by a given cannabis cultivation proposal.*

*In the event of a Sacred Lands Inventory positive result, the cannabis cultivator will be required to consult with culturally affiliated California Native American tribes, develop appropriate mitigation and conservation measures, submit proposed mitigation and conservation measures to the appropriate person(s) (Deputy Director for the Division of Water Rights or Executive Officer for the appropriate Regional Water Quality Control Board, as applicable) for written approval. The Deputy Director or Executive Officer, as applicable, has the authority to require all appropriate measures necessary to conserve archeological resources and tribal cultural resources listed on the Sacred Lands Inventory, including but not limited to Native American monitoring, preservation in place, and archeological data recovery. The cannabis cultivator shall also provide a copy of the final proposed mitigation and conservation measures to any culturally affiliated California Native American tribes identified by the Native American Heritage Commission. The Deputy Director or Executive Officer, as applicable, will carefully consider any comments or mitigation measure recommendations submitted by culturally affiliated California Native American tribes with the goal of conserving tribal cultural resources and prehistoric archeological resources with appropriate dignity.*

*END*

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*Cannabis documents referenced:*

**059.001**

Comment text: General Comments. Item #19:

1. The draft appears to address two issues: (1) assurance to the Board that consultation with geographically and culturally affiliated Tribe(s) has occurred and Tribal Cultural Resources (TCRs) will not be significantly impacted by "new or expanded cannabis cultivation activities"; and (2) establishing a protocol so that previously unknown or unidentified archaeological resources important to tribes will not be inadvertently damaged or destroyed as a result of new or expanded cannabis cultivation activities.

Please see ATTACHMENT (#19) for suggested language to address each of these two issues.

...

Record of Tribal and Cultural Resources Review. Prior to land disturbance activities (grading of 50 cubic yards or greater [per Hum Co Grading Ordinance "threshold"]) for new or expanded cannabis cultivation activities, the cannabis cultivator shall provide evidence that no known Tribal Cultural Resources (TCR) (FN 9) or other historical resources (new FN 9-A) will be significantly impacted by the land disturbing activities.

Such evidence may include:

1. Evidence of TCR and cultural resources review by a CEQA lead agency (e.g., County Planning Department) of the proposed cannabis cultivation activities, including record of consultation with the culturally and geographically affiliated Native American Tribe(s), and including mitigation or protection measures as appropriate (e.g., archaeological survey report, tribal correspondence, etc.); OR
2. Written results of formal records searches for the proposed cannabis activity areas of the Native American Heritage Commission Sacred Lands Inventory (FN 9-AI), and at the regional Information Center of the California Historical Resources Information System (IC of CHRIS) (FN 9B), evidencing the area has been archaeologically surveyed to current standards (within past ten years) and no TCR or other historical resources are present, as confirmed by a "no significant effects on TCR concurrence letter" from the Indian Tribe(s) that is geographically and culturally affiliated with the area (FN 9-C); OR
3. If the Sacred Lands Inventory and/or CHRIS records search reports reveal the area does contain a TCR or other historic resource, submittal of a written plan to avoid, minimize or mitigate significant impacts to such that has been agreed to in writing by the geographically and culturally affiliated Native American tribe(s) (FN 9-C); OR
4. If a CHRIS records search report reveals the proposed activity area has not been archaeologically surveyed to current standards (e.g., within past ten years), and there is no record of prior consultation with culturally and geographically affiliated tribe(s) (see FN 9-C), then the Cannabis Applicant must retain the services of a qualified professional archaeologist (FN 11) to conduct an initial cultural resources study of the proposed cannabis activity areas, to include a complete inventory of resources, a record of consultation with the geographically and culturally affiliated tribe(s), and management recommendations including tribal concurrence that no TCR will be significantly impacted by the proposed operations.

Inadvertent Archaeological Discoveries. If any buried archeological materials or indicators (FN 10) are uncovered or discovered during any cannabis cultivation activities, all ground-disturbing activities shall immediately cease within 100 feet of the find.

The cannabis cultivator shall notify the Appropriate Person within 48 hours of any discovery. The Appropriate Person is the Deputy Director for Water Rights (Deputy Director) if the cannabis cultivator is operating under the Cannabis SIUR, the Executive

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

#### TC-11

**Summary comment: The CHRIS is not a "one stop shop" that contains records of ALL possible tribal and other cultural resources that may indeed exist in California. It is an incomplete record because not all lands have been systematically inventoried. END**

*Summary response: Attachment A will be amended to require a Sacred Lands Inventory search, in addition to a CHRIS records search, prior to Prior disturbance activities for new or expanded cannabis cultivation activities. See the response to comment 59.001, above, for a summary of these changes. In addition, Attachment A will be amended to explicitly state that cannabis cultivation inconsistent with conservation or greenspace easements, including such easements held by California Native American tribes, is forbidden. Other requirements in Attachment A prevent cannabis cultivation on tribal lands without tribal authorization, protect tribal cultural resource sites listed on historic registers, provide for the conservation of inadvertently discovered archeological resources, and make compliance with existing law concerning discovery of human remains, including Native American remains, an explicit condition that cannabis cultivators must satisfy. The State Water Board concludes that these requirements, together, are sufficient to address known and reasonably foreseeable impacts to tribal cultural resources. END*

*Cannabis documents referenced:*

#### 059.002

Comment text: General Comments. Item #19:

2.The CHRIS is not a "one-stop shop" that contains records of ALL possible tribal and other cultural resources that may indeed exist in California. It is an incomplete record because not all lands have been systematically inventoried. END

#### TC-12

**Summary comment: General Comments. Item #19:**

**5.The Tribe, or the CRM consultant (or professional archaeologist) working incoordination with the geographically and culturally affiliated Indian tribe(s), and not the Cannabis Cultivator, would be the party responsible for submitting recommendations to avoid, minimize or mitigate significant impacts to tribal archaeological sites or TCRs to the SWRCB's Appropriate Person. The Cannabis Cultivator is the applicant, or person who is proposing cannabis cultivation activities; a Plot Plan of anticipated ground disturbances is what they provide to the Tribe and CRM consultant.**

**END**

*Summary response: As written, Attachment A establishes binding regulatory requirements for cannabis cultivators. These include the obligation for cannabis cultivators to consult with California Native American tribes and state agencies when necessary to prevent known or reasonably foreseeable impacts to tribal cultural resources. Attachment A also requires cannabis cultivators to retain a qualified archeologist, who provides services comparable to a CRM consultant, when necessary to prevent known or reasonably foreseeable impacts to tribal cultural resources. For more information on the policy reasons for this approach, see the responses to comments 59.001 and 59.002.*

*The Cannabis Policy establishes requirements for cannabis cultivators pursuant to the State Water Board's statutory authority under Water Code, section 13149, subdivision (a)(1)(A) to principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. Setting requirements for cannabis cultivators, and not third parties, is also necessary to ensure enforceability under Water Code section 1831 and 1847 and as conditions of cultivation licenses issued by the California Department of Food and Agriculture pursuant to section 26060.1, subdivision (b)(1) of the Business and Professions Code. For further information on enforcement, see response to comment 59.006.*

**END**

*Cannabis documents referenced:*

#### 059.004

Comment text: General Comments. Item #19:

5.The Tribe, or the CRM consultant (or professional archaeologist) working in coordination with the geographically and culturally affiliated Indian tribe(s), and not the Cannabis Cultivator, would be the party responsible for submitting recommendations to avoid, minimize or mitigate significant impacts to tribal archaeological sites or TCRs to the SWRCB's Appropriate Person. The Cannabis Cultivator is the applicant, or person who is proposing cannabis cultivation activities; a Plot Plan of anticipated ground disturbances is what they provide to the Tribe and CRM consultant.

**END**

#### TC-13

**Summary comment: General Comments. Item #19:**

**6.Measures to "conserve archaeological resources" go beyond Native American monitoring to include, but not be limited to, preservation in place, archaeological data recovery, or other mitigation measures deemed acceptable by the Tribe (and made a permit or project condition by the Appropriate Person).**

**END**

*Summary response: The State Water Board agrees that Native American monitoring is one example of an appropriate resource conservation measure that the Deputy Director for the Division of Water Rights or Regional Water Board Executive Officer, as applicable ("Appropriate Person"), may require to conserve archaeological resources. The current text is not intended to be an exhaustive list of such measures. The list of conservation measures that the Appropriate Person may require will be amended to include, but not be limited to, Native American monitoring, preservation in place, and archeological data recovery. In addition, Attachment A will be amended to clarify that the Appropriate Person will carefully consider any comments or mitigation measure recommendations submitted by culturally affiliated California Native American tribes with the goal of preserving prehistoric archeological resources with appropriate dignity. END*



**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

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Cannabis documents referenced:

**059.005**

Comment text: General Comments. Item #19:

6.Measures to "conserve archaeological resources" go beyond Native American monitoring to include, but not be limited to, preservation in place, archaeological data recovery, or other mitigation measures deemed acceptable by the Tribe (and made a permit or project condition by the Appropriate Person). END

**TC-14**

**Summary comment: The Policy needs to add language consistent with state law concerning penalties for violations. END**

*Summary response: Water Code section 1847 already allows the State Water Board to impose administrative civil liability for violations of a principle, guideline, or requirement established in the cannabis policy. (Wat. Code, § 1847, subd. (b)(1).) The statute authorizes civil liability of up to five hundred dollars (\$500), plus two hundred fifty dollars (\$250) for each additional day on which the violation continues if the person fails to correct the violation within 30 days after the board has called the violation to the attention of that person. (Id., subd. (a)(1).) Water Code section 1831 already authorizes the State Water Board to order cannabis cultivators to cease and desist if their diversion and use are not in compliance with an applicable limitation or requirement established in the Cannabis Policy. (Id., § 1831, subd. (d)(6)(B).) Section 26060.1 of the Business and Professions Code already requires that each cultivation license issued by the California Department of Food and Agriculture include terms requiring compliance with the Cannabis Policy. (Bus. & Prof. Code, § 26060.1, subd. (b)(1).) Accordingly, failure to comply with the Cannabis Policy may be grounds for revocation of a cannabis cultivator's cannabis license in appropriate circumstances. (See also id., §§ 26030, subd. (k); id., § 26031, subd. (a).) END*

Cannabis documents referenced:

**059.008**

Comment text: ADD PENALTIES FOR NOT REPORTING INADVERTENT DISCOVERY.  
END

**059.009**

Comment text: ADD PENALTIES FOR NOT ADHERING TO LEGAL PROCESS, OR MALICIOUSLY DEFILING A GRAVE, OR POSSESSING HUMAN REMAINS, ETC. UNDER CALIFORNIA STATE LAWS END

**TC-15**

**Summary comment: See Comment 59.007 END**

*Summary response: Attachment A will be amended to identify the landowner, and not the cannabis cultivator, as the person responsible under Public Resources Code sections 5097.94 and 5097.98 and incorporate other changes recommended by the Native American Heritage Commission. END*

Cannabis documents referenced:

**059.007**

Comment text: General Comments. Item #20:

1.The Draft policy misidentifies the cannabis cultivator, rather than the landowner or his/her designated representative, as the responsible authority under PRC 5097. Please see ATTACHMENT (#20) for suggested language, plus citation of the full regulations for your information.

...

Discovery of Native American Remains. Upon discovery of any human remains, cannabis cultivators and landowners shall immediately comply with Health and Safety Code section 7050.5 and Public Resources Code section 5097.98. The following actions shall be taken immediately upon the discovery of human remains:

All ground-disturbing activities in the vicinity of the discovery shall stop immediately. The cannabis cultivator shall immediately notify the county coroner. Ground disturbing activities shall not resume until the requirements of Health and Safety Code section 7050.5 and Public Resources Code section 5097.98 have been met. The cannabis cultivator shall ensure that the human remains are treated with appropriate dignity.

Per Health and Safety Code section 7050.5, the coroner has two working days to examine human remains after being notified by the responsible person. If the remains are Native American, the coroner has 24 hours to notify the Native American Heritage Commission.

Per Public Resources Code section 5097.98, the Native American Heritage Commission will immediately notify the person it believes to be the most likely descendent of the deceased Native American. The most likely descendent has 48 hours to make recommendations to the landowner, or his or her authorized representative, for the treatment or disposition, with proper dignity, of the human remains and any grave goods. If the most likely descendent does not make recommendations within 48 hours, the landowner, or his or her authorized representative, shall reinter the remains in an area of the property secure from further disturbance. If the landowner does not accept the descendant's recommendations, the landowner or the descendent may request mediation by the Native American Heritage Commission. If mediation fails, the landowner shall reinter the human remains and any grave goods with appropriate dignity on the property in a location not subject to future subsurface disturbance. FND

**Cannabis Cultivation Policy and General Order Response to Public Comments**  
**COMMENTS AND RESPONSES -- BY COMMENTER**

Updated: 10/13/2017

**Wright, Lisa**

**Application for coverage (AP)**

**AP-04**

**Summary comment: Sites under 2,000 square feet should not be required to register or enroll in the Cannabis General Order. END**

*Summary response: The commenter does not state why sites under 2,000 square feet should not be required to register or enroll. However, the potential water quality degradation from small sites, especially those that are not required to comply with the best practicable treatment or control measures can be significant. Therefore, it is appropriate for such sites to be required to comply with the Cannabis Policy and General Order. Furthermore, all commercial cultivation activities (commodities that are destined for the medical or recreational marketplace) are required to register or enroll under the Cannabis General Order. Compliance with the Cannabis General Order is required for a cultivator to obtain a CDFR cultivation license. For non-commercial activities, the Cannabis General Order provides personal use exemptions for medical or recreational cultivation activities. Sites that have a total disturbed area under 1,000 square feet and qualify for a personal use exemption are not required to register or enroll under the Cannabis General Order. A change was not made in response to the comment. END*

*Cannabis documents referenced: Policy: pg 13, par 3, 5; Policy: pg 14, par 8; Policy: pg 15, par 8; Policy: pg 18, par 2-3; Order: pg 2, F7.a; Order: pg 3, F7.c; Order: pg 4, F10, 12; Order: pg 5, F13; Order: pg 12, F41.a; Order: pg 13, F41.d*

**018.002**

Comment text: It is my belief that viable, small-scale cannabis cultivation is an integral part of the environmental recovery and long term sustainability of Trinity County and the North Coast Region in general. I believe the NCRWQCB carefully weighed these factors when drafting and implementing its Order and I urge the State Water Resources Control Board to defer to this regional expertise and locally appropriate solution. END

**Cost of compliance (CS)**

**CS-01**

**Summary comment: The proposed requirements are too expensive to implement, especially for smaller farms. END**

*Summary response: The State Water Board's statutory mandate is protection of water quality. However, the State Water Board is aware of the costs of compliance imposed on cultivators and balances the requirements with the need to protect water quality. The cost of compliance is a function of the site specific conditions. Sites located a suitable distance from a water body on relatively level terrain are not required to implement a large number of BPTC measures. Sites located in close proximity to a water body or on a sloped property, are a higher threat to water quality and therefore are subject to additional BPTC measure requirements. Similarly, larger cultivation sites are an inherently higher threat to water quality and have additional requirements imposed upon them. For those facilities that cannot comply with the applicable BPTC measures, a schedule to achieve compliance can be obtained from the Regional Water Board. END*

*Cannabis documents referenced: Policy: pg 13, par 2, Item c; Policy: pg 15, par 4; Order: pg 3, Finding 7.c; Order: pg 5, Finding 13; Policy: pg 17, par 2; Policy: pg 22, par 5; Att A: Sec 1, pg 15, Item 31; Att A: Sec 1, pg 16, Item 36, fn 3; Att A: Sec 5, pg 70, par 6; Staff rpt: pg 71, par 4; Staff rpt: pg 72, par 3; Order: pg 14, Finding 42.a; Order: pg 21, C.3.a; Order: Att D, pg D-3, Item 5.4; Order: Att D, pg D-4, par 2; Order: Att D, pg D-9, par 2; Order: Att D, pg D-10, Item 6.1*

**018.001**

Comment text: The requirements proposed in the SWRCB Cannabis General Order would impose significant additional expenses that could make my continued cottage operation untenable. In many cases, these additional requirements are redundant to water resource protections already contemplated by the NCRWQCB Order. END

**Grandfather coverage (GR)**

**GR-01**

**Summary comment: Existing Regional Board general order enrollees have been expending substantial amount of time and resources to comply with their Regional Board general order requirements. Please allow existing enrollees under existing Regional Board general orders to keep their regulatory coverages. The dischargers are concerned that they are going to need to spend more money to comply with a new set of requirements from the Cannabis Policy and General Order. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy and General Order have been revised to reflect the following changes to facilitate existing Regional Water Board general orders: (1) an extension of transition period for existing North Coast and Central Valley Regional Water Board enrollees into the Cannabis General Order coverage. Instead of transition by July 1, 2018, the existing enrollees are required to transition by July 1, 2019; (2) existing enrollees prior to the adoption of the Policy will be allowed to continue operating with the reduced setbacks in the existing Regional Water Board Cannabis General Orders unless the Regional Water Board Executive Officer determines the reduced setbacks are not protective of water quality.*

*The Cannabis Policy and General Order requirements for waste discharges are prepared with the consideration that North Coast and Central Valley Regional Water Boards existing orders are in place for the last two years, and that the existing enrollees under both orders are putting in significant time and monetary investment to comply with the order requirements. State Water Board staff work closely primarily with key staff in both Regional Water Boards to prepare the requirements addressing waste discharges that can be workable for implementation in both Regional Water Boards, yet also streamlined enough for a statewide implementation. Requirements addressing waste discharges from cannabis cultivation activities within the Cannabis Policy and General Order generally overlap with the two Regional Water Board orders (e.g. compliance with list of BMPs, self-reporting and certification, and threat to water quality assessment based on proximity to surface waterbodies).*

*California Water Code section 13263(e) requires all WDRs to be reviewed and revised periodically. Because the North Coast Regional Water Board adopted a waiver of WDRs, by law the coverage ends five years after adoption. All of the cannabis cultivators would be required to reapply at that time so it is more appropriate to make the transition sooner so that the North Coast and Central Valley Regional Water Boards don't have to implement two permits within each region.*  
*END*

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Cannabis documents referenced:

#### 018.003

Comment text: It is important to note that while recent state legislation exempts the SWRCB Cannabis General Order from the requirements imposed by the CA Environmental Quality Act (CEQA) the NCRWQCB Order is protective of water quality in the Region and should be continued for its intended 5-year duration. END

### Regulatory structure (RS)

#### RS-01

**Summary comment: SWRCB General Order should allow the Regional Boards more flexibility and deferment to implement locally appropriate solutions. Enrollees under a Regional Board order shall be allowed to continue until it expires. Allow each region to develop its own program or opt to use the new State Order. North Coast Region may use their existing Order and cannabis farmers can continue on their compliance track, or farmers that have enrolled in the Regional Board order shall be allowed to continue to work under existing conditions and thus be grandfathered in. Does the General Order allow Regional Boards to develop site-specific orders for those that do not fit into SWRCB General order?(15.004) (74.005) (77.002) (17.014) (18.004), (38.004). END**

*Summary response: The Cannabis General Order provides a transition period until July 1, 2019 for enrollees under the existing Regional Water Board orders. They may transition sooner if they prefer. Those cultivators that have initiated remedial activities at their facilities will not be penalized because the Cannabis General Order requires similar activities.*

*The Cannabis General Order does allow Regional Water Boards the alternative of preparing a region specific general order or site specific WDRs. However, California Water Code Sections 13146 and 13263 require that WDRs implement any applicable water quality control plan or policy. Any general order or site-specific order adopted by a Regional Water Board must be consistent with the requirements of the Cannabis Policy. Therefore, any region specific general order would be very similar to the Cannabis General Order. END*

*Cannabis documents referenced: CCP Staff Rpt pg. 28, GO 6b, pg. 2*

#### 018.004

Comment text: I believe that the Regional Water Boards are well positioned to evaluate conditions within the nine regions and where the SWRCB General Order conflicts with a Regional Order, the General Order should defer to the local expertise of the Regional Boards. Ideally the SWRCB General Order should allow the Regional Boards to retain enough flexibility to implement locally appropriate solutions that are equally protective of water quality. END

### Yocha Dehe Wintun Nation

#### CEQA, permits (CQ)

#### TC-01

**Summary comment: ...lands under where a fee-to-trust land acquisition from an eligible Indian Tribe or eligible Indian individual(s) to the United States of America are pending by the Department of Interior and or from other federal actions. END**

## Cannabis Cultivation Policy and General Order Response to Public Comments

### COMMENTS AND RESPONSES -- BY COMMENTER

Updated: 10/13/2017

*Summary response: The Cannabis Policy prohibits cannabis cultivation on tribal lands without the express of the governing body of the affected tribe or a person deputized by the governing body of the affected tribe. Tribal lands are defined as lands recognized as "Indian country" within the meaning of title 18, United States Code, section 1151. This definition includes "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation." (18 U.S.C. § 1151(a).)*

*Accordingly, it is the State Water Board's understanding that cannabis cultivation is prohibited, without tribal authorization, on lands which are privately held pursuant to the issuance of a patent if they are within the limits of an Indian reservation. This includes lands within the limits of an Indian reservation for which a fee-to-trust acquisition is pending.*

*The Cannabis Policy also prohibits cannabis cultivation on land not owned by the cannabis cultivator without the express written permission of the land owner. This includes land owned by a California Native American tribe, as defined in section 21073 of the Public Resources Code, and land owned by the United States or any department thereof. Section 21073 of the Public Resources Code includes federally recognized Indian tribes within the definition of California Native American tribe. (See also generally Stats. 2004, ch. 905, § 1, et seq.) Accordingly, it is the State Water Board's understanding that cannabis cultivation is prohibited, without authorization, on lands owned by the tribe, the United States, or a department of the United States for which a fee-to-trust acquisition is pending.*

*END*

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*Cannabis documents referenced:*

**060.001**

Comment text: lands under where a fee-to-trust land acquisition. From an eligible Indian Tribe or eligible Indian individual(s) to the United States of America are pending by the Department of Interior and or from other federal actions. END

## **RESPONSES**

### ***FN-02 Summary Response:***

The State Water Board, in consultation with the California Department of Fish and Wildlife (CDFW), evaluated established instream flow methods to develop interim instream flow requirements for the wet season that protect aquatic resources and balance other beneficial uses of water, which includes cannabis cultivation. Methods evaluated needed to meet the timeline, scale, and purpose of this Cannabis Policy, and use the best available information. To ensure the interim instream flow requirements were flexible and adaptable, the instream flow methodology and flow dataset had to have sufficient spatial coverage to allow for a compliance point to be moved, as needed, so the interim instream flow requirements could be re-calculated at new locations.

The State Water Board determined that the best available flow dataset for statewide instream flow development was the predicted historical flow data sourced from a flow modeling effort conducted by United States Geological Survey (USGS) in cooperation with The Nature Conservancy (TNC) and Trout Unlimited. The USGS flow modeling effort developed empirical flow models that predicted the natural (unaffected by land use or water management) monthly streamflows from 1950 to 2012 for the majority of the USGS National Hydrologic Database stream reaches in California (Carlisle, et. al. 2016).

The Tessmann Method is a standard setting or desktop instream flow assessment technique that establishes monthly bypass flows. The State Water Board, in consultation with CDFW, reviewed established standard setting techniques that could be used with the natural monthly streamflow dataset and determined the Tessmann Method was the best method available to meet the timeline, scale, and purpose of this Cannabis Policy. The Tessmann Method is an approach that limits cumulative diversions based of a percentage of the average natural flow on a monthly time step which allows for setting variable flow requirements that represent the variability in flows between months. As noted in the Cannabis Policy, the State Water Board will monitor other flow events that occur at a shorter time step, such as high flow events that occur throughout the wet season to evaluate whether additional requirements are needed to maintain high flow variability during other periods of the wet season.

In accordance with Health and Safety Code section 57004, the State Water Board submitted the Draft Cannabis Policy for peer review. The peer review included, among other components of the Cannabis Policy, a review of the use of the Tessmann Method and the Aquatic Base Flow Standard. The peer review supports the State Water Board's approach to establish statewide flows, recognizing the interim nature and timeframe of the State Water Board's policy. Please refer to the peer review comments and the State Water Board's responses for more information.

The State Water Board did not have the resources or time to do water availability analyses statewide before meeting statutory and regulatory deadlines associated with the rollout of California's multi-agency regulation of cannabis. The Small Irrigation Use Registration Program is working to develop a method for water availability analyses for future use when determining whether water is available for new cannabis registrations.

To be protective, the percent of flow approach recommended by the commenter should consider all diversions in a watershed. The amount and timing of water diversions for cannabis cultivation and other beneficial uses varies by watershed. The Cannabis Policy only applies to diversions of water for cannabis cultivation and does not apply to diversions for other beneficial uses of water. The State Water Board determined with the limited information available on cannabis crop demand, location, and number of other beneficial uses in watersheds throughout California, the most protective approach would be to shift a portion of the water demand, in this case water for cannabis cultivation, to a time period when more water is available. Shifting water diversions from times of scarcity (dry season) when it is needed to support aquatic species to periods of time when water is more available (wet season) is a reasonable and appropriate approach to address water availability concerns. Instituting such a shift in water demand does increase the footprint of land disturbance for cannabis cultivation, however the Cannabis Policy includes Requirements to mitigate the potential impacts of land disturbance for cannabis cultivation. The State Water Board recognizes there may be some watersheds with low water demand in which year round diversions with limited storage may be equally successful in protecting threatened and endangered species and aquatic habitat compared to a forbearance period. In such instances, the Cannabis Policy allows for cannabis cultivators in these watersheds to enter into agreements with CDFW that allow for a modified forbearance period and/or flow requirements once approved by the Deputy Director for Water Rights.

California's intra-annual and inter-annual flow variability will result in situations where the interim instream flow Requirements are, by wet season diversion month, potentially over-protective in some locations of the state and under-protective in other locations. The State Water Board also recognizes that there may be localized impacts to instream flow in areas with a significant number of diversions for cannabis cultivation.

The Cannabis Policy allows for the State Water Board to adaptively manage and implement the interim instream flow Requirements by requiring cannabis cultivators to install a local instream flow gage and establish an interim instream flow requirement for those cannabis cultivators at that gage. Over time, this approach will help to ensure the monthly interim instream flow requirements are achieved in localized areas and also provide information to inform whether additional requirements are needed to protect instream flows (e.g., requirements to protect high flow events). The Cannabis Policy also allows that cannabis cultivators may request approval from the State Water Board to install a local instream flow gage and an updated interim instream flow requirement for the local gage if the cultivators believe the assigned gage does not accurately represent the local conditions.

The Cannabis Policy further allows for the development of local cooperative solutions and modification to the Cannabis Policy interim instream flow Requirements (i.e. numeric flow requirements, forbearance period) if cannabis cultivators enter into an agreement with CDFW and the agreement provides watershed-wide protection that is comparable or greater than the Cannabis Policy. The State Water Board determined that it is more protective to use the best available information to establish statewide, interim instream flow requirements that may be over or under protective in regional or localized areas than risk the ongoing significant impacts to threatened and endangered species while developing regionally or locally specific flow requirements. Such regional or locally specific flow requirement will be developed and included in future updates to the Cannabis Policy, as available. Finally, the Cannabis Policy and the interim instream flow requirements may be updated over time as reasonably necessary.

Water Code section 13149 directs the State Water Board to develop interim Principles and Guidelines (requirements) pending the development of long-term requirements. For the development of long-term instream flow requirements, the State Water Board, in consultation with CDFW, will have the time and resources to further evaluate other scientifically robust methods that may be more reflective of regional variability and the needs of target species.

***FR-09 Summary Response:***

Water Code section 13149 expressly authorizes the State Water Board to address groundwater diversions in the principles and guidelines that form the Policy. Further, the State Water Board also has the authority under article X, section 2 of the California Constitution and Water Code section 100 to prevent the waste, unreasonable use, unreasonable method of use, or the unreasonable method of diversion of all waters of the state. Water Code section 275 directs the State Water Board to “take all appropriate proceedings or actions before executive, legislative, or judicial agencies” to enforce the constitutional and statutory prohibition against waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, commonly referred to as the reasonable use doctrine. The reasonable use doctrine applies to the diversion and use of both surface water and groundwater, and it applies irrespective of the type of water right held by the diverter or user. (Peabody v. Vallejo (1935) 2 Cal.2d 351.) What constitutes reasonable water use is dependent upon the totality of the circumstances presented and may vary based on changing circumstances. (Environmental Defense Fund, Inc. v. East Bay Mun. Utility Dist. (1980) 26 Cal.3d 183, 194.)

The State Water Board has reasonably concluded, based on studies and other evidence in the record, that groundwater extractions that cause surface water flows to fall below the aquatic base flow requirements described in the Policy constitute an unreasonable use and unreasonable method of diversion. On that basis, the Policy includes authority for the State Water Board to: (1) examine whether groundwater diversions within a watershed are causing surface water flows to fall below the aquatic base flow requirements; and (2) impose forbearance or other requirements on those groundwater users. Thus, unlike the forbearance period for surface water diversions, groundwater forbearance requirements are imposed only on an as-needed basis based on an observed, localized relationship between those groundwater diversions and surface water flows.

The ABF Standard methodology does not evaluate the hydrologic connectivity of surface water and groundwater. Additionally, the ABF Standard methodology does not account for potential groundwater diversions impacts on surface flows in watershed areas with significant surface water flow augmentations (e.g., downstream of large dams). The State Water Board used the New England Aquatic Base Flow Standard (ABF Standard) methodology to develop aquatic base flow instream flow requirements at compliance gages to inform whether groundwater diversions are causing potential impacts on surface flow. The State Water Board can calculate the aquatic base flow at any stream reach throughout California where the natural flow data sourced from the United States Geological Survey flow modeling effort are available. The State Water Board is evaluating groundwater diversion impacts at a local scale. Similar to the numeric surface water wet season flow requirements, the State Water Board may require cannabis cultivators to install a localized gage and move the numeric surface water wet season flow requirement and the dry season aquatic base flow requirement to the new gage location.

The Cannabis Policy includes requirements for groundwater diversions including a surface water aquatic base flow to help inform whether additional requirements are needed in certain areas to help ensure the individual and cumulative impacts of groundwater diversions do not have a negative impact on the surface water flows needed to support aquatic habitat. However, at this time, the Cannabis Policy does not include specific numeric flow requirements or a forbearance period that groundwater diversions are required to meet. The Cannabis Policy is structured to allow for the State Water Board to evaluate whether, in certain locations, there are a significant number of groundwater diversions or locations where significant numbers of surface water diverters are switching to groundwater diversions and those groundwater diversions have the potential to have negative localized impact on surface flows. The Cannabis Policy discusses this structure along with monitoring whether the aquatic base flow is being met, the State Water Board will evaluate whether localized impacts are occurring from the density and demand of cannabis groundwater diversions and/or whether a significant number of surface water diverters are switching to groundwater diversions. If the State Water Board determines groundwater flows are potentially having a negative impact on surface flows, the State Water Board will notify cannabis groundwater diverters in that area of the need to develop alternative measures to reduce water demand during the dry season (e.g., storage or water conservation) or secure alternative water supplies. Any forbearance period required by the Deputy Director of Water Rights would consider the temporal effects of groundwater diversions such that a forbearance period may occur at a different time period than the surface water forbearance period to reflect the delayed impacts of groundwater diversions on surface flow. For example, a groundwater forbearance period that starts earlier and ends earlier than the surface water forbearance period may allow for some groundwater recharge from precipitation in the late winter and early spring and not impact low flows during the dry season.

The Cannabis Policy Requirements include measures to increase infiltration and disperse runoff from cannabis cultivation sites. In development of the Cannabis Policy Requirements the State Water Board reviewed and considered the best management practices identified in the Mendocino County Resource Conservation District's publication titled: "Watershed Best Management Practices for Cannabis Growers and Rural Gardeners".

***RB-09 Summary Response:***

"The Cannabis Policy requires that Qualified Professionals are used to design, locate, construct, and inspect roads to reduce the impacts of road construction and use. Qualified Professionals are defined within the Policy, which states that a Qualified Professional shall only perform work he/she is qualified to complete, consistent with applicable licensing and registration restrictions, and shall certify any work completed. Road construction falls within the area of civil engineering, so a licensed civil engineer will be required to supervise the project. However, the engineer may rely upon other professionals to assist in the road alignment, soil stability, and storm water evaluations.

Roads constructed for cannabis cultivation must comply with the requirements of the Cannabis Policy and General Order, not only where such compliance is convenient. In addition, road construction may be subject to other permitting requirements depending upon the location and stated purpose of the road construction. The Pacific Watershed Manual provides a comprehensive approach to road construction and maintenance. It was developed with input from the California Department of Forestry and Fire Protection, California



Department of Fish and Wildlife, North Coast Regional Water Quality Control Board, and the California Geological Survey, as well as geologists and hydrologists from U.S. Forest Service and Bureau of Land Management offices in the western United States. The Road Handbook is not intended to be the single solution to proper road construction. The requirement to use Qualified Professionals, compliance with requirements of Attachment A, monitoring and reporting (including winterization measures, site maintenance - including roads, and tier status confirmation), submittal of Site Management Plan, and Regional Board actions (reviewing plans, conducting inspections, carrying out enforcement activities) will help assure that road impacts can be minimized and addressed for protection of water quality.

Construction on very steep slopes (over 50%) is not desirable. However, State Water Board staff acknowledges that such site conditions exist and, in some regions, such construction may be unavoidable. If local regulations prohibit this activity altogether, the Cannabis Policy does not supersede those local regulations. The Cannabis Policy and General Order provide that site-specific WDRs may be required to address construction on very steep slopes. The site-specific WDRs will be at least as restrictive as what is required by the Cannabis Policy. If site-specific WDRs or water quality certifications are required for road building activities, the discretionary action of the Regional Water Board triggers the need for CEQA compliance.

The term maximum extent practicable is appropriate in a policy and general order when the specifics of individual dischargers' operations and waste discharges are not known. The Water Boards have experience enforcing "maximum extent practicable" requirements in the context of municipal stormwater permitting, which may inform Water Board determinations as to whether a cannabis cultivator has implemented best management practices to the "maximum extent practicable." The common English usage of the term also is generally understood and will be sufficient to take enforcement activities if needed.

CEQA's exemption for approvals of projects when it can be "seen with certainty" that no significant environmental impacts will result necessarily relies on a comparison of the environmental baseline with any environmental impacts resulting from the approval. Currently, cannabis cultivation is occurring throughout California without being subject to many of the requirements contained in the Policy and General Order. The Policy and General Order impose requirements that will reduce rather than increase these impacts, and no additional impacts will result from approval of the Policy and General Order compared to existing conditions. It should also be noted that, even if the "seen with certainty" exemption did not apply, approval of the Policy and General Order fall within a statutory exemption. California Water Code section 13149(b)(1) states, "Notwithstanding Section 15300.2 of Title 14 of the California Code of Regulations, actions of the board and the Department of Fish and Wildlife under this section shall be deemed to be within Section 15308 of Title 14 of the California Code of regulations, provided that those actions do not involve relaxation of existing streamflow standards." The Policy contains restrictions on the timing and extent of diversions to ensure that cannabis cultivation in compliance with the Policy will not result in a relaxation of streamflow standards.

The Cannabis Policy and General Order require roads to be designed by licensed professionals and those professionals must certify the work. (See definition of qualified professional.)

The need for a CEQA analysis is discussed in this comment response above. Riparian incursions are addressed by the statement that road impacts avoid riparian areas and setbacks to the maximum extent practicable.

"

## **COMMENTS**

### ***21.014 (Save Our Seashore) Comment Text***

"Further, these Documents provide no performance standards, no requirement for a stamped design document and no verification of properly installation for roads (Concern #3). Instead the Documents simply require roads to conform to the Pacific Watershed Roads Manual or the Forest Practice Rules. And if the road conforms to these standards, the Documents assume that there will be no impacts. However, forestry roads are sited by necessity to harvest trees on steep slopes or in riparian zones. The Manual and Rules cannot eliminate these road impacts, but can provide the best possible environmental protection given the necessity to site these roads on steep slopes or in riparian zones.

Cannabis roads, in contrast, are often sited where it is convenient. It is therefore inappropriate and environmentally destructive for the Cannabis Documents to instruct cultivators to rely exclusively on Pacific Watershed Manual guidelines for cannabis cultivation roads.

On Low Risk and Moderate Risk slopes, planning and management of cannabis roads should be included as a separate submittal in the Site Management Plan or Erosion Control Plan and stamped by a qualified professional (See Concern #5). On High Risk slopes, cannabis cultivation is allowed with a Waste Discharge Requirement (WDR), but roads can be developed without a WDR. We instead propose that roads proposed for "High Risk" areas should require a separate CEQA analysis and a WDR. Roads proposed on slopes over 50% should be prohibited.

Also, the Documents suggest reducing cannabis road impacts by avoiding riparian areas and setbacks to "maximum extent practicable," but the impacts from such roads will still be significant. But such terms as "maximum extent practicable" are not easily understood or regulated. Further, this appears to put the burden on the regulator to demonstrate impact when the burden should be on the developer to demonstrate that, cost notwithstanding, there are no physical alternatives that could avoid the riparian areas and associated setback.

In order to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, the Cannabis Policy should:

- Amend the list of "qualified professionals" and require road plans to be prepared by them, reviewed and stamped to certify work was done per plan.

- State that roads proposed for “High Risk” areas will require a CEQA analysis and a WDR and that roads on slopes over 50% are prohibited.
- State that the burden for proposed riparian setback incursions is on the developer to show that, cost notwithstanding, no other alternatives exist.

**78.001 (Native American Heritage Commission) Comment Text**

NAHC suggests the following language (additions underlined, deletions in ~~strikeout~~):

17. The cannabis cultivator shall not cultivate cannabis on tribal lands, on lands owned by a California Native American tribe as defined in Public Resources Code section 21073 for the purposes of preserving or protecting Native American cultural resources of the kinds listed in Public Resources Code sections 5097.9 and 5097.993, on conservation easements held pursuant to Civil Code section 815.3 by a federally recognized California Native American tribe or a nonfederally recognized California Native American tribe on the contact list maintained by the Native American Heritage Commission, on greenway easements held pursuant to Civil Code section 816.56 by a federally recognized California Native American tribe or a nonfederally recognized California Native American tribe on the contact list maintained by the Native American Heritage Commission or within 600 feet of tribal lands, lands owned by a California Native American tribe as defined in Public Resources Code section 21073 for the 1zpurposes of preserving or protection Native American cultural resources of the kinds listed in Public Resources Code sections 5097.9 and 5097.993, conservation easements held pursuant to Civil Code section 815.3 by a federally recognized California Native American tribe or a nonfederally recognized California Native American tribe on the contact list maintained by the Native American Heritage Commission, or greenway easements held pursuant to Civil .Code section 816.56 by a federally recognized California Native American tribe or a nonfederally recognized California Native American tribe on the contact list maintained by the Native American Heritage Commission without the express written permission of the governing body of the affected tribe or from a person deputized by the governing body of the affected tribe to authorize cannabis cultivation on tribal lands or lands or easements owned by the affected tribe for the purpose of protecting Native American cultural resources.

**78.002 (Native American Heritage Commission) Comment Text**

The NAHC suggests the following language (additions underlined, deletions in ~~strikeout~~):

18. No cannabis cultivation activities shall occur within 600 feet of an identified tribal cultural resource site or a site listed on the Sacred Lands Inventory maintained by the Native American Heritage Commission pursuant to Public Resources Code sections 5097.94 (a) and 5097.96 (Sacred Lands Inventory). The cannabis cultivator is solely responsible for identifying any tribal cultural resource sites or sites listed on the Sacred Lands Inventory within the cannabis cultivation area.

**78.003 (Native American Heritage Commission) Comment Text**

The NAHC suggests the following language (additions underline, deletions in ~~strikeout~~):

19. Prior to land disturbance activities for new or expanded cannabis cultivation activities, the cannabis cultivator shall perform a records search of potential Native American archaeological or cultural resources (CHRIS potential discovery) at a California Historical Resources Information System (CHRIS) information center. A CHRIS qualified archaeologist shall perform the records search and document the results.

Prior to land disturbance activities for new or expanded cannabis cultivation activities, the cannabis cultivator shall also request a search of the Sacred Lands Inventory that is maintained by the Native American Heritage Commission pursuant to Public Resources Code sections 5097.94(a) and 5097. 6 (Sacred Lands Inventory). If the Sacred Lands Inventory search reveals the presence or potential presence of Native American places of special or Social significance to Native Americans, Native American known graves or cemeteries, or Native American sacred places, the cannabis cultivator shall consult with the tribe or tribes that are culturally affiliated with the area in which these Native American cultural resources exist or potentially exist prior to any ground disturbing activities. The information provided by tribes through consultation with the cannabis cultivator shall be maintained as confidential by the cannabis cultivator and its agents.

If buried archaeological materials or indicators are uncovered or discovered during any cannabis cultivation activities, all ground disturbing activities shall immediately cease within 100 feet of the find.

The cannabis cultivator shall notify the Appropriate Person within 48 hours of any ~~discovery or within seven days of a CHRIS potential discovery~~. The Appropriate Person is the Deputy Director for Water Rights (Deputy Director) if the cannabis cultivator is operating under the Cannabis SIUR, the Executive Officer of the applicable Regional Water Board (Executive Officer) if the cannabis cultivator is operating under the Cannabis General Order or the Cannabis General Water Quality Certification, or both if the cannabis cultivator is operating under both programs.

In the event that prehistoric archaeological materials or indicators are discovered, the cannabis cultivator shall also notify the Native American Heritage Commission within 48 hours of any ~~discovery or within seven days of a potential CHRIS discovery~~ and request a list of any California Native American tribes that are potentially culturally affiliated with the discovery or CHRIS potential discovery. The cannabis cultivator shall notify any potentially culturally affiliated California Native American tribes of the discovery or CHRIS potential discovery within 48 hours of receiving a list from the Native American Heritage Commission.

The cannabis cultivator shall promptly retain a professional archaeologist and a culturally affiliated Native American Tribal Historic Preservation Officer or Native American cultural resources monitor and recommend appropriate conservation measures. The cannabis cultivator shall submit proposed conservation measures to the appropriate person(s) (Deputy Director for the Cannabis SIUR and Executive Officer for the Cannabis General Order or Cannabis General Water Quality Certification) for written approval. The appropriate person may require all appropriate measures necessary to conserve archaeological resources, including but not limited to Native American cultural resources monitoring.

In the event that prehistoric archaeological materials or indicators are discovered, the cannabis cultivator shall also provide a copy of the proposed conservation measures to any culturally affiliated California Native American tribes identified by the Native American Heritage Commission. The appropriate person will carefully consider any comments submitted by culturally affiliated California Native American tribes with the goal of conserving prehistoric archaeological resources with appropriate dignity.

Ground-disturbing activities shall not resume within 100 feet of the discovery until all approved measures have been completed to the satisfaction of the Deputy Director and/or Executive Officer, as applicable.

**78.004 (Native American Heritage Commission) Comment Text**

The NAHC suggests the following language (additions underlined, deletions in ~~strikeout~~):

20. Upon discovery of any human remains, cannabis cultivators shall immediately comply with Health and Safety Code section 7050.5 and, if applicable, Public Resources Code section 5097.98. The following actions shall be taken immediately upon the discovery of human remains:

All ground-disturbing activities in the vicinity of the discovery shall stop immediately, the cannabis cultivator shall immediately notify the county coroner. Ground disturbing activities shall not resume until the requirements of Health and Safety Code section 7050.5 and, if applicable, Public Resources Code section 5097.98 ~~has~~ have been met. The cannabis cultivator shall ensure that human remains are treated with appropriate dignity.

Per Health and Safety Code section 7050.5, the coroner has two working days to examine the human remains after being notified by the person responsible ~~person for the excavation, or by his or her authorized representative~~. If the remains are Native American, the coroner has 24 hours to notify the Native American Heritage Commission.

Per Public Resources Code section 5097.98, the Native American Heritage Commission will immediately notify the persons it believes to be most likely descended ~~of~~ from the deceased Native American. The most likely descendants have 48 hours to make recommendations to the ~~cannabis cultivator~~ landowner for the treatment or disposition, with ~~proper~~ appropriate dignity, of the human remains and any associated grave goods. If the NAHC is unable to identify a descendant, the mediation provided for pursuant to subdivision (k) of Public Resources Code section 5097.94, if invoked, fails to provide measures acceptable to the landowner, or the most likely descendants, does not make recommendations, and the most likely descendants and the landowner have not mutually agreed to extend discussions regarding treatment and disposition pursuant to subdivision (b)(2) of Public Resources Code Section 5097.98, the ~~cannabis cultivator~~ shall reinter the remains in an area of the property secure from further disturbance ~~landowner or his or her authorized representative shall reinter the human remains and items associated with Native American human remains with appropriate dignity on the property in a location not subject to further and future subsurface disturbance consistent with subdivision (e) of Public Resources Code section 5097.98. If the ~~cannabis cultivator~~ landowner does not accept the descendants' recommendations, the ~~cannabis cultivator~~ landowner or the descendants may request mediation by the Native American Heritage Commission pursuant to~~

Public Resources Code section 5097.94, subdivision (k). ~~If mediation fails, the cannabis cultivator shall reinter the human remains and any grave goods with appropriate dignity on the property in a location not subject to future subsurface disturbance.~~