

A Big Stick

PUBLISHED IN THE NORTH COAST Journal

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With law enforcement raids and private paramilitary security agencies running through Humboldt's hills enough to strike fear in the hearts of marijuana growers, one of California's previously benign regulatory agencies will soon attempt to make a splash in the marijuana world.

The State Water Resources Control Board is due to begin an aggressive civil enforcement campaign against marijuana growers who are affecting water quality in Northern California.

Cris Carrigan, director of the state water board's Office of Enforcement, will lead the pilot program, which should begin at the turn of 2015.

Carrigan spoke before the Humboldt County Board of Supervisors on Oct. 15, explaining that he concocted an effort intended to hold marijuana growers to the same standards that any other water-utilizing and landscape-altering industry must adhere to.

It's a water-specific aspiration. The water board is not authorized, nor is it interested in determining whether grows are legal under California's medical marijuana law, Carrigan said. Previously, there was difficulty in applying state water laws to circumstances out of compliance with federal law (such as marijuana grows), but "decided it's not an authorization of illegal activity under federal law," he said. "Basically the political will has finally gotten here."

There are no new laws on the books — the effort is underway because of additional funding Gov. Jerry Brown awarded to the state water board in this year's budget — but Carrigan thinks the civil penalties, which include fines and injunctive relief, will help repair waterways that support salmon and other impacted wildlife.

The state water board employees under his command will look for illegal grading, dumping, pesticide and fertilizer use, land clearing, timber harvesting, construction and sedimentation that impact the North Coast's watersheds, and demand that the owners and operators of marijuana grows take action to repair damage.

The effort will focus on counties north of Sacramento. The state water board is coordinating with agencies — Fish and Wildlife, DA's offices, sheriff's offices, county code enforcers and others — to determine what areas need focus and how the agencies can work together to accomplish their goals.

"Instead of reacting to complaints, we want to look at watersheds where there's a water supply issue or a water quality issue being created by cannabis cultivation ... and then react to that," Carrigan told supervisors. "If we see that streams are drying up that are salmon habitat ... and we see that there's a massive amount of grading in that watershed, that's where we'll go."

The effort will focus on private land grows. Trespass grows on public land are always illegal, Carrigan said, and require criminal enforcement. But, under existing state laws, the water board has a powerful tool to hold the owners and operators of marijuana grow sites responsible for environmental damage.

The water board is developing a voluntary enrollment plan for marijuana growers who wish to be in compliance. "Enroll in the program, and ... you have a limited defense to water code and water violations if you comply with the program," Carrigan said. That means acquiring proper permits for grading, streambed crossings, storm water and erosion control, a site management plan for chemicals and a demonstrated water right.

Carrigan hopes that the enrollment program will bring in enough money to pay for the enforcement of "bad actors" who are unwilling to try to come into compliance. But at this point — based on a self-reported estimate — the water board figures about 10 percent of the potential regulated public would be willing to enroll in the next two years. In any other industry, Carrigan said, the state would expect 80 to 90 percent voluntary enrollment.

But growers discovered to be out of compliance could face civil penalties of \$10,000 a day, assessed from the date that a cleanup order goes out. The state's cleanup and abatement laws also provide for situations when a grow operator might skedaddle out of the state or country to avoid criminal or civil penalties.

"Under water code section 13304, if you own a dirty property that contains a condition of pollution or nuisance, you're strictly liable to clean it up," Carrigan said. "If you can't afford to do that, we can go in and do it ourselves and put a lien on the property."

There are situations, he said, where landowners have such vast properties that they could reasonably be victims of trespass grows.

"There are some really large ranches. ... But those are the rare cases," Carrigan said. "In almost every case the rent's high enough, there's an option contract — there are market-based indications that the landowner is profiting from the cannabis cultivation. Could you prove that criminally, beyond a reasonable doubt? Maybe not. But could you say look there's a mess on your property and you've got to clean it up? ... Absolutely."

Carrigan anticipates a five-week cycle for tackling problem watersheds. Week one: Prioritize an area. Week two: Sheriff's deputies ensure access to a site, whether it's through consent of the landowner or a search warrant. Week three: Field personnel visit the site. Week four: Staff assembles the case. Week five: Lawyers huddle and decide who's going to take the case. Repeat.

There's a vast array of criminal and civil codes that growers must comply with, Carrigan said, and it's certainly possible that these site visits could result in penalties from any of the agencies that will be involved. But his primary focus, the stand behind the plan, is to tackle watersheds where marijuana cultivation is harming rivers and streams.

"What we're concerned about is not the activity of cultivating cannabis but the discharge of waste to the waterways of this state," he said. "We'll deal with that in the way we best know how, without interfering with local control over the way they deal with what's going on."