

Elk Valley Rancheria, California



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November 6, 2018



VIA POSTAL SERVICE

Gita Kapahi
Director of the Office of Public Participation; Tribal Liaison
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

Re: Proposed Update to Cannabis Cultivation Policy; Tribal Cultural Resource Protection

Dear Ms. Kapahi:

Thank you for your October 12, 2018 letter describing the State Water Board's notice of opportunity for public comment regarding cannabis cultivation, including tribal participation in determining the appropriate location for cannabis cultivation activities on tribal land. The Elk Valley Rancheria, California, a federally recognized Indian tribe (the "Tribe"), understands that the State Water Board's existing Cannabis Policy seeks to protect water quality and instream flows, including diversion of water and discharge of waste associated with cannabis cultivation, in order to ensure that such activities do not adversely affect the quality and beneficial use of such waters. Further, the Tribe understands that commercial cultivators must obtain coverage under the Cannabis Cultivation General Order as a condition of licensure.

The Tribe shares many of the State Water Board's concerns. The Tribe understands that the State Water Board now seeks to protect tribal cultural resources, archeological resources, and human remains and require tribal approval for cannabis cultivation on or within 600 feet of tribal lands. The proposed changes outline potential responses a federally recognized Indian tribe could provide in response to a proposed cannabis cultivation activity on or within 600 feet of tribal land.

The Tribe has some questions about the State Water Board's proposed activities on tribal land.



- **Tribal Update – Attachment A, Section 1, Requirement 19**

The Tribe supports the proposed provision that: “Nothing in this provision shall be construed to modify or interpret tribal law in any way.” However, the Tribe would add the following language: Nothing in this provision shall be construed to modify or interpret tribal law or modify tribal jurisdiction in any way.

- **Indoor Cultivation Clarification – Attachment A, Section 1, Requirement 38**

The Tribe proposes the following changes to the proposed alternative sets of language:

a) The indoor cannabis cultivation structure:

- i. Has a building permit (or other similar authorization) on file with the county, city, or local jurisdiction (including a federally recognized Indian tribe) and started construction prior to October 1, 2018; ...

OR


b) The indoor cannabis cultivation structure:


- i. Has a building permit (or other similar authorization) on file with the county, city, or local jurisdiction (including a federally recognized Indian tribe) and construction started on or after October 1, 2018

- **Attachment 2**

The draft template letter and tribal authorization request form provides: “By this letter the [...] is requesting authorization from [...] for the proposed cannabis cultivation site pursuant to Requirement 19 in Section 1 of the Cannabis Policy’s Attachment A.” The tribal authorization of the cannabis activities on or within 600 feet of tribal lands would then allow the cultivator to complete enrollment with the State Water Board. Further, the request letter provides: “The attached SMP describes how the cultivation site will comply with the requirements of the Cannabis Policy and the Cannabis Cultivation General Order, and how compliance measures will be implemented at the cultivation site.”

The Tribe understands that Requirement 19 addresses coverage under the Construction Storm Water Program and requires compliance with applicable state, city, county, or local regulations, ordinances, or license requirements including, but not limited to those for cannabis cultivation, grading, construction, and building, among other requirements.





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To be clear, the draft form of the tribal authorization merely provides written evidence of a tribe's decision to allow or not allow the cannabis activities on or within 600 feet of tribal lands. The draft template request letter and the draft tribal response letter could potentially be at odds and inconsistent with tribal jurisdiction.

Therefore, the Tribe suggests the following clarifications to the request letter:

- The attached SMP describes how the ~~cultivation site~~ cultivator will comply with the requirements of the Cannabis Policy and the Cannabis Cultivation General Order, and how compliance measures will be implemented by the cultivator at the cultivation site, subject to tribal jurisdiction. Nothing herein is intended to and shall not be construed to grant the [State Water Board or Regional Board] jurisdiction over the [Tribal Authority] or tribal land.

The changes suggested above are consistent with the State Water Board's Notice of Opportunity for Public Comment indicating that the Cannabis Cultivation General Order imposes requirements on cannabis cultivators, not on sovereign, federally recognized Indian tribes or tribal lands. The proposed changes reflect the current balance of jurisdiction as well as the state of federal Indian law.

Finally, to the extent that a cultivator's compliance with the Cannabis Cultivation General Order to ensure that such activities do not adversely affect the quality and beneficial use of state waters requires the consent of a tribe or the exercise of tribal jurisdiction, the Tribe requests that: 1) the State Water Board not decline to approve a cultivator's application for that reason alone; and 2) the State Water Board and the cultivator work cooperatively with the Tribe (i.e., tribal authority) to consult and determine a mutually beneficial outcome consistent with tribal jurisdiction and socio-economic needs as well as protection of tribal cultural resources.

Thank you in advance for your thoughtful consideration of the Elk Valley Rancheria, California's comments. Should you have any questions, please contact the Tribe's General Counsel, Bradley Bledsoe Downes, at 707.465.2610.

Sincerely,



Dale A. Miller
Chairman

cc: Elk Valley Tribal Council

