

Central Valley Regional Water Quality Control Board
1/2 October 2015 Board Meeting

Response to Written Comments on
Tentative Waste Discharge Requirements General Order
for Discharges of Waste Associated with
Medicinal Cannabis Cultivation Activities

At a public hearing scheduled for 1/2 October 2015, the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) will consider adoption of tentative Waste Discharge Requirements General Order (R5-2015-XXXX) for Discharges of Waste Associated with Medicinal Cannabis Cultivation Activities (the "Tentative General Order"). This document contains responses to written comments received from interested parties in response to the Tentative General Order. Written comments were required to be received by the Central Valley Water Board by 8 September 2015 in order to receive full consideration.

Commenter 1: CalTrout, Trout Unlimited, and The Nature Conservancy

Commenter 2: Central Valley Region Agricultural Commissioner s

Commenter 3: Emerald Growers Association

Commenter 4: Rural County Representatives of California

Commenter 5: Calaveras Cannabis Alliance

Commenter 6: Fresno Cannabis Association

Commenter 7: Charnel James

Commenter 8: Andrew Merkel

Commenter 9: David Masarik

Commenter 10: Nancy Roybal

Commenter 11: A Very Concerned CA Citizen

Written comments from the above interested parties are summarized below, followed by the response of Central Valley Water Board staff.

CALTROUT, TROUT UNLIMITED, & THE NATURE CONSERVANCY COMMENTS

CalTrout, Trout Unlimited, and The Nature Conservancy jointly submitted comments on the Tentative General Order after they attended a Working Group Meeting on the Tentative General Order. Their comments/recommendations were incorporated into the version of the Tentative General Order that was released for Public Comment.

CALTROUT, TROUT UNLIMITED, AND THE NATURE CONSERVANCY COMMENT #1 – Highlight Erosion from Roadways

Erosion from roadways is a very significant problem with many existing grows, and CalTrout, Trout Unlimited, and The Nature Conservancy feel that this warrants more specific mention.

RESPONSE: Board staffs agree that erosion from roadways is a significant threat to water quality resulting from cannabis cultivation. Approximately half of the Best Management

Practices (BMPs) outlined in Attachment A: BMPs Manual for Cannabis Cultivation pertain to controlling sediment and erosion from roadways, terraces, and watercourse crossings, and to properly maintaining those structures. Under the Tentative General Order, the Board will require that all cannabis cultivators enrolled in the Tentative General Order implement all applicable BMPs outlined in the BMPs Manual.

CALTROUT, TROUT UNLIMITED, AND THE NATURE CONSERVANCY COMMENT #2 – Include Generators in Associated Facilities

CalTrout, Trout Unlimited, and The Nature Conservancy have noted significant problems with growers locating generators adjacent to streams, such that diesel fuel pollutes that waterway, and would suggest including generators under associated facilities.

RESPONSE: Board staffs agree, and the footnote for associated facilities now reads: Associated facilities include those constructed or placed features that facilitate plant cultivation (including but not limited to amendments storage and mixing buildings/areas, material storage buildings/areas, greenhouses, and generators).

CALTROUT, TROUT UNLIMITED, AND THE NATURE CONSERVANCY COMMENT #3 – Clarify What Are Cultivation Activities

CalTrout, Trout Unlimited, and The Nature Conservancy suggest elucidating what is included under “cultivation activities”.

RESPONSE: Board staffs agree, and developed the image on the last page of the Notice of Intent to provide as an example of what constitutes cannabis cultivation activities (and therefore should be measured when determining the area that cultivation activities occupy and/or disturb).

CALTROUT, TROUT UNLIMITED, AND THE NATURE CONSERVANCY COMMENT #4 – Add Diversion Practices to Site Management Plan and Highlight Riparian Protection

CalTrout, Trout Unlimited, and The Nature Conservancy suggest that “diversion practices” be added to the list requirements in the Site Management Plan for Tier 3 Cultivators, and suggest that you more fully describe “riparian protection” to alert cultivators to the suite of riparian issues they need to consider in a management plan.

RESPONSE: Board staffs agree and added diversion practices to the list of requirements for a Site Management Plan for Tier 3 Cultivators. Cannabis cultivators compliant with the Tentative General Order should not be affecting riparian areas, as no production lands or associated facilities are allowed to be located within 100 feet of any surface water body (i.e. lake, wetland, Class I, II, or III watercourse) under the Tentative General Order.

CALTROUT, TROUT UNLIMITED, AND THE NATURE CONSERVANCY COMMENT #5 – Extend Low Flow Period and Add Voluntary Forbearance Period

The Water Supply Section of the BMPs Manual notes September and October as the critical low flow period for California streams. CalTrout, Trout Unlimited, and The Nature Conservancy suggest extending the low flow period to include July and August and suggest adding a voluntary forbearance period in the list of BMPs.

RESPONSE: Board staffs agree, and the BMPs Manual now states that the “lowest flow period” is from late summer to fall. The BMPs Manual encourages cannabis cultivators to develop water storage systems to collect and capture water during the wet season for use during the dry/growing season, in compliance with a landowner’s water rights.

CALTROUT, TROUT UNLIMITED, AND THE NATURE CONSERVANCY COMMENT #6 – Screening Water Pump Intakes

CalTrout, Trout Unlimited, and The Nature Conservancy suggest that the BMP regarding screening water pump intakes should also require compliance with CDFW requirements for intake screens, as well as cite the relevant Fish and Game Code.

RESPONSE: Board staff agree and the water pump intakes BMP now includes the Fish and Game Code sections as well as lists a website where cultivators can find fish screening criteria.

CALTROUT, TROUT UNLIMITED, AND THE NATURE CONSERVANCY COMMENT #7 – Bladders as a Water Storage Mechanism

CalTrout, Trout Unlimited, and The Nature Conservancy suggest that the BMPs Manual discourage landowners from using bladders due to their short service life and the significant environmental damage associated with their failure.

RESPONSE: Board staffs disagree that bladders should be discouraged, as bladders may be the most reasonable means for a cultivator to store water at their operation and/or may be the most reasonable means for large scale cultivators to sufficiently store enough water to forebear diverting water from a watercourse during its lowest flow period. However, it is also worth noting that the Tentative General Order does place any restrictions on the Central Valley Water Board or the California Department of Fish and Wildlife from exercising their full enforcement authorities to hold individuals accountable for any environmental harm caused by bladder failures.

CALTROUT, TROUT UNLIMITED, AND THE NATURE CONSERVANCY COMMENT #8 – Distance from Water Resources for Mixing and Preparing Pesticides, Fertilizers, and Petroleum Products

CalTrout, Trout Unlimited, and The Nature Conservancy suggest specifying exactly how far away from water resources landowners should mix and prepare pesticides, fertilizers, and petroleum products.

RESPONSE: Board staffs agree, and now there is a BMP stating that pesticides, fertilizers, and petroleum products should be mixed/prepared and loaded on an impermeable pad at least 200 feet away from surface water bodies.

AGRICULTURAL COMMISSIONERS COMMENTS

AGRICULTURAL COMMISSIONERS COMMENT #1 – Pesticides Definition

Placer County Agricultural Commissioner Josh Huntsinger, on behalf of Central Valley Region Agricultural Commissioners, requests that references in the Tentative General Order to “Pesticides and Herbicides” be changed to “Pesticides”, and that the Tentative General Order use the definition of Pesticide found in California’s Food and Agricultural Code.

RESPONSE: Water Board staffs agree with this request and have changed all references of “Pesticides and Herbicides” to “Pesticides”. Staff also changed the definition of Pesticide in the Best Management Practices Manual for Cannabis Cultivation to the definition found in California’s Food and Agricultural Code.

EMERALD GROWERS ASSOCIATION (EGA) COMMENTS

EGA COMMENT #1 – Third Party Compliance Program

EGA encourages that the Central Valley Water Board develop and pass detailed guidelines for third party compliance programs.

RESPONSE: Board staffs agree that third party groups could effectively operate as discharger-funded intermediaries between the Board and the thousands of cannabis cultivators in the region, and would encourage enrollment and compliance with the Tentative General Order.

Board staff will provide guidance to possible third party certification providers by 1 July 2016, and request that any persons/organizations interested in establishing a discharger-funded third party group with the intent of assisting cannabis cultivators in compliance with the Tentative General Order contact the Central Valley Water Board Redding office and express their interest.

EGA COMMENT #2 – A Prohibition on Problem Solving

Banning cannabis cultivation is bad public policy, and some local policies are the driving force behind the worst water quality and public safety impacts of cannabis cultivation.

RESPONSE: The power to impose local ordinances and land use controls restricting cannabis cultivation is vested in the cities and counties pursuant to the constitutional grant of power contained in Article XI, section 7 of the California Constitution, which states, “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”

While the Tentative General Order simply regulates waste discharges from cannabis cultivation sites that may affect water quality (it neither bans nor permits cannabis cultivation per se), the Central Valley Water Board will defer to local ordinances and land use controls until such ordinances and controls are found to be in conflict with the general laws of the State.

EGA COMMENT #3 – Statewide Consistency

EGA strongly encourages the Central Valley Water Board to change the acreage thresholds in the suitability language for each tier to be more consistent with the North Coast’s Waiver of Waste Discharge Requirements.

RESPONSE: Board staffs agree with the request of multiple commenters to establish a threshold for permit coverage based on area of cultivation rather than a plant count, and subsequently have removed the plant count factor from the Tentative General Order.

However, the acreage thresholds have been developed to ensure that discharges from cannabis cultivation sites would not violate the water quality objectives contained in the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* and the *Water Quality Control Plan for the Tulare Lake Basins* (hereafter Basin Plans), which collectively cover the entire Central Valley Region and which are different in many respects from the *Water Quality Control Plan for the North Coast Region*. Modifications to provide consistency with the North Coast's Waiver are not justified if such modifications would not necessarily provide sufficient protection to comply with the Central Valley Water Board's Basin Plans.

RURAL COUNTY REPRESENTATIVES OF CALIFORNIA (RCRC) COMMENTS

RCRC COMMENT #1 – Expand to Include Recreational Cannabis

The RCRC encourages the Central Valley Water Board to expand the Tentative General Order so that it can be adapted to cannabis grown for recreational uses.

RESPONSE: At this time, Medicinal Cannabis Cultivation is the only type of permitted cannabis cultivation allowed in the State of California. Board staffs agree that the Tentative General Order for Cannabis Cultivation would need to be adapted to include cannabis cultivation activities intended for recreational uses in the event that those activities become legal in the future. Board staffs were concerned that if they included all Cannabis Cultivation, it may give the perception to some that the Central Valley Water Board was permitting a clearly illegal activity, and therefore have limited the Tentative General Order to medicinal cannabis cultivation.

CALAVERAS CANNABIS ALLIANCE (CCA) COMMENTS

CCA COMMENT #1 – Educational Materials in Layman's Terms

The Calaveras Cannabis Alliance request that the Central Valley Water Board provide easily understood educational materials to guide well-meaning but bureaucratically illiterate cultivators in compliance with the Tentative General Order.

RESPONSE: Board staff agree with this request and plan to conduct extensive education and outreach efforts to inform cannabis cultivators of best management practices to prevent/mitigate discharges of waste from cannabis cultivation activities to waters of the state, as well as how to enroll and comply with the Tentative General Order.

CCA COMMENT #2 – Enforcement on Non-compliant Cultivators

CCA believes that enforcement efforts should be well-planned and comprehensive in scope, and reported in such a manner easily accessible to compliant cannabis cultivators.

RESPONSE: Board staffs agree that effective and efficient enforcement is necessary so that non-compliant cannabis cultivators do not have an advantage over compliant cultivators, and to encourage compliance with the Tentative General Order. Enforcement efforts for discharges of waste from cannabis cultivation activities will continue regardless of if the Tentative General Order is adopted. Information on official enforcement actions taken by the Central Valley Water Board is available on the Board's website, and subscribers of the Board's Marijuana Cultivation and Regulation electronic mailing list will be provided information on enforcement actions against cannabis cultivators when it is appropriate to do so.

CCA COMMENT #3 – Established Coalitions Accept Cannabis Cultivators

CCA requests that the Central Valley Water Board take the official position that coalitions established under the Irrigated Lands Regulatory Program open their membership to legal cannabis cultivators.

RESPONSE: Eligibility for membership in the multiple irrigated lands Coalitions has been determined through a collaborative process that considered the functions that the Coalitions needed to provide to the regulated public and to the Board. Since those functions are materially different for the purposes of complying with the Tentative General Order, due to the specific nature of cannabis cultivation as it is currently practiced in California, it would be inappropriate for the Board to take the position that all Coalitions must open their membership to include legal cannabis cultivators at this time.

CCA COMMENT #4 – Legal Pest Management Practices Insufficient

Attachment D, the Legal Pest Management Practices for Marijuana Growers in California document, fails to include some of the most effective organic pesticides currently in use by cannabis cultivators, fails to list some pest species, and in some cases recommends pesticides that are largely ineffective or harmful to cannabis plants in the Central Valley's climate.

RESPONSE: At present time, there are no pesticides registered specifically for use on cannabis, and the use of pesticides on cannabis plants has not been reviewed for safety, human health effects, or environmental impacts. Under California law, the only pesticide products not illegal to use on cannabis are those that contain an active ingredient that is exempt from residue tolerance requirements and either registered and labeled for a broad enough use to include use on cannabis or exempt from registration requirements as a minimum risk pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 25(b) and the California Code of Regulations, title 3, section 6147.

Attachment D was prepared by the Department of Pesticide Regulation providing guidance to California marijuana growers for legal pest management practices, listing active ingredients that are exempt from residue tolerance requirements and either exempt from registration requirements or registered for a use that is broad enough to include use on Cannabis. Water Board staff included the Legal Pest Management Practices for Marijuana Growers in California document as Attachment D, to provide some guidance to cannabis cultivators enrolled under the Tentative General Order. It is not the Central Valley Water Boards intent to regulate or approve pesticides. If the Department of Pesticide Regulation makes any changes to that

document, Board staff will be sure to update Attachment D and make those changes known to enrollees as soon as possible after changes are made.

CCA COMMENT #5 – 1000 ft² Exemption on NOI

CCA recommends including information on the under 1000 square foot exemption to the Notice of Intent form.

RESPONSE: Board staffs agree, and have added a note to the Notice of Intent stating that “Cannabis cultivators whose activities occupy and/or disturb less than 1000 square feet do not need to seek coverage under the General Order for Cannabis Cultivation.”

CCA COMMENT #6 – Development that is Conditionally Exempt or that Does Not Require Grading Permit on NOI

Section 5, III. Local Permits of the Notice of Intent requires that enrollees provide a County Grading Permit and any required Erosion Control Plan for site disturbance of more than 50 cubic yards. However, some development of more than 50 cubic yards of material would not trigger the need for a County Grading Permit. This would constitute an unreasonable requirement for coverage under the Tentative General Order

RESPONSE: Board staffs agree, and have added an option to Section 5, III. b. of the Notice of Intent for development that is “conditionally exempt or does not require a grading permit.”

FRESNO CANNABIS ASSOCIATION (FCA) COMMENTS

FCA COMMENT #1 – Word Choice

Finding 1 - Cannabis cultivation has grown substantially, but not “exponentially”.

RESPONSE: Comment noted. The term “exponentially” has been replaced with “substantially”. The import of Finding 1 is the accurate statement that largely unregulated cannabis cultivation and related activities have proliferated throughout the region resulting in significant new water quality impacts. Whether the growth is described as substantial or exponential, the water quality impacts have been serious and significant.

FCA COMMENT #2 – Describe Order as Permanent

Finding 3 - No effort is apparently under way to integrate cannabis cultivators into existing regulatory programs and none seems likely in the near future. The Tentative General Order should be described as permanent.

RESPONSE: Board staffs disagree with Commenter’s assertion. The Tentative General Order is one aspect of the Central Valley Water Board’s development of a comprehensive regulatory program to regulate the discharge of pollutants from marijuana cultivation sites that may affect water quality. As finding No. 18 in the Order states, where applicable, cannabis cultivators are required to comply with existing regulatory programs and enroll in the State Water Board’s

General Construction and Industrial Stormwater Permit, or abide by conditions in the Central Valley Water Board's Forest Activities Program. As to commenter's request that the Order be made permanent, as with all Waste Discharge Requirements issued by the Board, Individual and General Waste Discharge Requirements remain in effect until modified by the Board.

FCA COMMENT #3 – Statewide Consistency

Finding 4 - The Central Valley Water Board should remove number of plants, and increase the square footage threshold to 2000 ft², for determining if a cannabis cultivation operation requires coverage under the Tentative General Order to track with the North Coast Waiver.

RESPONSE: Board staffs agree with the request of multiple commenters to establish a threshold for permit coverage based on area of cultivation rather than a plant count, and subsequently have removed the plant count factor from the Tentative General Order.

However, see Response to EGA Comment #3 for why the Tentative General Order's *de minimis* exemption has not been changed.

FCA COMMENT #4 – Suggested Revision

Finding 5 – Suggested revision to last sentence “This term does not include those individuals whose cultivation activities occupy and/or disturb less than 2,000 square feet.”

RESPONSE: See response to Comment #3.

FCA COMMENT #5 – Suggested Addition

Finding 11 – Suggested addition: “It is anticipated that the California Legislature and/or California voters will pass new laws and regulations declaring cannabis to be an agricultural crop.”

RESPONSE: While this may be true, it does not have a bearing on beneficial use designations in the Basin Plans.

FCA COMMENT #6 – Suggested Deletion

Finding 18 - FCA have received no information to support the idea that cannabis cultivation will be covered by the Irrigated Lands Regulatory Program

RESPONSE: This finding reflects efforts that are currently underway to ensure that cannabis cultivation is regulated in a manner consistent with other similarly situated dischargers. This finding has not been changed.

FCA COMMENT #7 – Third Party Compliance Program

Finding 19 - FCA encourages that the Central Valley Water Board develop and pass detailed guidelines for third party compliance programs.

RESPONSE: Board staffs agree that third party groups could effectively operate as discharger-funded intermediaries between the Board and the thousands of cannabis cultivators in the region and would encourage enrollment and compliance with the Tentative General Order.

Water Board staff will provide guidance to possible third party certification providers by 1 July 2016, and request that any persons/organizations interested in establishing a discharger-funded third party group with the intent of assisting cannabis cultivators in compliance with the Tentative General Order, contact the Central Valley Water Board Redding office and express their interest.

FCA COMMENT #8 – Unable to Provide Comment on Annual Monitoring Program Template

Finding 20 - Attachment C of the Tentative General Order was a one-page placeholder containing no details as to what the annual reports must contain. FCA is unable to provide comments on a process and documents that have not been made available for public review.

RESPONSE: All required elements of the Annual Monitoring Program were outlined in the Tentative General Order under the Tier 2 and Tier 3 Cannabis Cultivator sections. It was Staff's intent to learn from Cultivators during the public comment period how best to develop the Annual Monitoring Program Template so that the requirements and expectations of the Annual Monitoring Program for Tier 2 and Tier 3 Cultivators are easily understood and followed. There are no required elements of the Annual Monitoring Program Template that were not listed in the Tentative General Order available during the public comment period.

FCA COMMENT #9 – CEQA Existing Facility Categorical Exemption

Finding 22 – FCA suggests that the Board cannot rely on the “existing facility” categorical exemption (the “Class 1 Exemption”) to justify not conducting additional environmental review before issuing a permit that would regulate existing cultivation sites. FCA states that the 15300.2 exceptions to the exemptions preclude the Board from relying on the Class 1 Exemption because:

- The sites to be regulated are currently existing in sensitive environments,
- The regulation of these facilities may present cumulative impacts, and
- The Board's reluctance to issue permits in Counties with local prohibitions presents a de facto "unusual circumstance."

RESPONSE: Board staffs disagree that the Board cannot rely upon the Class 1 Exemption to before imposing regulatory requirements on *existing* cannabis cultivation sites. To be clear, if the Board were authorizing *new* development in sensitive areas, the Board could not solely rely on the Class 1 Exemption to exempt that new development from additional environmental review. However, the Board is not authorizing new development; it is imposing regulatory requirements on the existing, unregulated discharges in order to ensure the protection of water quality. This is precisely within the scope of the Class 1 Exemption, which exempts the “operation, repair, maintenance, [and] *permitting ... of existing public or private structures, facilities, mechanical equipment, or topographical features*” from environmental review. (Cal. Code of Regs., tit. 14, § 15301.)

The Guidelines further state that the “key consideration is whether the project involves negligible or no expansion of an existing use.” (*Id.*) Accordingly, the Tentative General Order only provides regulatory coverage to those existing sites where there will be negligible or no expansion in use. Owners or cultivators operating new or expanded cultivation sites are not eligible for enrollment under the General Order without demonstrating compliance with CEQA as described in the Notice of Intent.

With respect to the three subsections of the CEQA Guidelines that FCA cites as precluding the use of the Class 1 Exemption, neither are applicable here:

California Code of Regulations, title 14, section 15300.2(a): In full, this subsection states,

Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

The Board is not citing to Class 3 (New Construction or Conversion of Small Structures), Class 4 (Minor Alterations to Land), Class 5 (Minor Alterations in Land Use Limitations), Class 6 (Information Collection), or Class 11 (Construction of Accessory Structures) to exempt the regulation of existing cultivation sites. It is worth noting that Classes 3, 4, 5, 6, and 11 all have something in common: they all authorize new, albeit limited, development activities. If these new development activities were going to be constructed in sensitive habitats, it would make sense to preclude the use of a Categorical Exemption. But this is neither the class of exemption nor the type of authorization that the Board is citing.

California Code of Regulations, title 14, section 15300.2(b): In full, this subsection states,

Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

In practical terms, this exception to the exemptions precludes an agency from issuing a series of minor development approvals (the “successive projects” mentioned in the regulation) by citing categorical exemptions when the cumulative effect of all of these approvals would be significant. For example, if a City authorized new construction of a small structure (citing the Class 11 Categorical Exemption), a land use alteration (citing the Class 5 Categorical Exemption), and the construction of an accessory structure (citing the Class 11 Categorical Exemption) all on the same parcel of land, and where all of those individual approvals would cumulatively result in a significant impact, the City would not be allowed to exempt the approvals from environmental review. But that is not what is occurring here. For existing sites, the Board is issuing a single General Order to impose restrictions to protect water quality. No other actions are contemplated that would preclude the use of the existing facility categorical exemption under 15300.2(b).

California Code of Regulations, title 14, section 15300.2(c): In full, this subsection states,

Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Although Board staff acknowledge that it is somewhat unusual that local governments have taken such extremely divergent approaches in regulating a

particular activity (ranging from open encouragement of cannabis cultivation to absolute bans), this idiosyncrasy does not itself create the type “unusual circumstance” that CEQA is concerned with. In reviewing all the information available, the Central Valley Water Board finds that substantial evidence in the record supports the Board’s determination that unusual circumstances do not exist that precludes its use of the Class 1 exemption. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086, 1114.)

FCA COMMENT #10 – NOI and CEQA

Finding 23 – FCA states that, “[i]t is unclear whether the Central Valley board has the legal authority to enforce every aspect of CEQA, or to make issuance of permits contingent upon proof of permitting from other state, local and federal agencies.” FCA states that the Board’s proposed approach “put[s] the Central Valley board at the very back of the regulatory bus,” and that “[t]he water board’s efforts to protect water quality should not be blocked or frustrated by a chaotic mix of local ordinances that continue to be in flux.”

RESPONSE: Board staffs assume that the statement that the Board is “at the very back of the regulatory bus” refers to the fact that the Tentative General Order reflects the Board’s deference to the Counties’ land use authority and local ordinances (See Response to EGA Comment #2). This deference is part of a long-standing relationship between the Board and local agencies when it comes to CEQA compliance; ordinarily, for new land developments (such as the development of a new cannabis cultivation site), the Board operates in tandem with local governments to navigate the CEQA process. In these circumstances, the County usually assumes the role of the CEQA lead agency and the Board acts as a responsible agency, guiding the CEQA analysis as it pertains to water quality. This is, of course, impossible when the land use is outdoor cannabis cultivation in a County where there is a ban on this activity. Faced with this challenge, the Board could either independently conduct its own more thorough CEQA review in order to nonetheless issue permits these Counties (as the Commenter suggests), or it could defer to local land use authority and choose not to issue permits in these counties. The Tentative General Order opts for the latter course of action, which is consistent with state law.

FCA COMMENT #11 – Additional CEQA Exemptions

Finding 23 – FCA comments that the Board cannot cite to additional CEQA Categorical Exemptions because, “[r]egulations that provide for spot enforcement, or no enforcement, are “unusual” on their face and provide no assurance of protection.” FCA states that the most severe impacts are associated with growing cites that will not fall under the purview of the General Order.

RESPONSE: The Commenter is referring to that the fact that the Tentative General Order will not regulate a large number of cannabis cultivation sites because they are either located in Counties with a ban on cultivation or because they are too large to fall under the purview of the Tentative General Order. This will inevitably mean that the Board will rely on spot enforcement (i.e., “spot enforcement or no enforcement”) to ensure the protection of water quality at these sites. The Commenter views this approach as having potentially large environmental consequences, as many of these sites could potentially create significant impacts to the environment because they are not covered by the General Order. And, in the opinion of the Commenter, these impacts could potentially be characterized as “significant” or “unusual.”

However, the Tentative General Order's deference to the Counties by not allowing these sites to enroll under the General Order is essentially a "rejection or disapproval" of regulating those sites under the General Order. And, by statute, "projects which a public agency rejects or disapproves" are not subject to CEQA. (Pub. Resources Code, § 21080.) The fact that the Tentative General Order would not allow those facilities to be enrolled would not preclude the use of additional Categorical Exemptions to buttress the Board's decision not to conduct additional CEQA review for the Sites that *do* qualify for enrollment.

FCA COMMENT #12 – Legal Pest Management Practices Insufficient

Finding 25 - Attachment D, the Legal Pest Management Practices for Marijuana Growers in California document, is not exhaustive and use of pesticides cited in the document could be harmful to cannabis plants under certain climatic conditions.

RESPONSE: See response to CCA Comment #4.

FCA COMMENT #13 – How Will Tentative Order Address Indoor Cultivation

It is unclear how the Tentative General Order will address impacts associated with indoor cultivation, which creates discharges to septic systems and municipal water systems.

RESPONSE: The Tentative General Order will regulate waste discharges from outdoor medicinal cannabis cultivation to waters of the state, which include surface and ground waters. Discharges to septic and municipal waste water systems are not covered under the Tentative General Order.

FCA COMMENT #14 – Inter-Region Consistency

Discharge specifications for the Tentative General Order should be consistent with those of the North Coast Regional Board's Waiver.

RESPONSE: As with the acreage thresholds (Response to EGA Comment #3), Board staff developed the discharge specifications to ensure that discharges from cannabis cultivation sites would not violate the water quality objectives contained in the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* and the *Water Quality Control Plan for the Tulare Lake Basins* (hereafter Basin Plans), which collectively cover the entire Central Valley Region and which are different in many respects from the *Water Quality Control Plan for the North Coast Region*. Modifications to provide consistency with the North Coast's Waiver are not justified if such modifications would not necessarily provide sufficient protection to comply with the Central Valley Water Board's Basin Plans.

CHARNEL JAMES COMMENTS

CHARNEL JAMES COMMENT #1 – Discharges of Trash and Waste

Finding 17 states that discharges of trash, human waste, and household refuse from cannabis cultivation activities threaten to impact beneficial uses of waters of the state. Trash, human waste, and household refuse would contaminate the product and are not a problem in a legitimate cannabis cultivation operation.

RESPONSE: All of the threats to beneficial uses of waters of the state listed in Finding 17 have been documented by state scientists and law enforcement while investigating and inspecting cannabis cultivation operations. Trash, human waste, and household refuse are legitimate threats to beneficial uses and water quality, and therefore Finding 17 will remain unchanged.

CHARNEL JAMES COMMENT #2 – Local/County Regulations and Ordinances

Finding 23. e. requires that the development of a cannabis cultivation site be compliant with any applicable County regulations and ordinances, including grading, construction, and building ordinances. This section should be limited to building and grading permits as needed.

RESPONSE: See response to EGA Comment #2. Finding 23 will remain unchanged.

CHARNEL JAMES COMMENT #3 – Legal Pest Management Practices Insufficient

As spidermites are a normal concern for cannabis, then the products on the market for such pest should be reviewed and evaluated to be added to the list (Attachment D: Legal Pest Management Practices for Marijuana Growers in California), if they are not already on the list.

RESPONSE: See response to CCA Comment #4.

ANDREW MERKEL COMMENTS

ANDREW MERKEL COMMENT #1 – Local/County Regulations and Ordinances

The Tentative General Order should be made available to cannabis cultivators in all counties within the Central Valley Region regardless of the Local or County regulations and ordinances prohibiting or limiting cannabis cultivation.

RESPONSE: See response to EGA Comment #2.

DAVID MASARIK COMMENTS

DAVID MASARIK COMMENT #1 – Insufficient Notice

Most of the public learned of the Tentative General Order on Wednesday, September 2nd and did not have sufficient time to fully study and provide comment.

RESPONSE: The Central Valley Water Board is required to provide a 30-day public comment period before a hearing to adopt Waste Discharge Requirements. The public comment period began with the Tentative General Order being posted on the Central Valley Water Board website and emailed to all interested persons who had subscribed to the Marijuana Cultivation

and Regulation electronic mailing list. The Notice of Public Hearing and Workshop Announcements were then emailed to County Code Enforcement and Natural Resources Protection personnel, and were distributed to Sheriff's Offices via the California State Sheriff's Association. The State Water Board's Office of Public Affairs also distributed the Notice of Public Hearing and Workshop Announcements to multiple media outlets throughout the Central Valley Region, and Water Board staff hosted workshops at each of the three Central Valley Water Board offices. These public outreach efforts were above and beyond what is required during the public comment period.

DAVID MASARIK COMMENT #2 – Local/County Regulations and Ordinances

The Tentative General Order should not be made available to cannabis cultivators in Butte County due to an ordinance on cannabis cultivation.

RESPONSE: See response to EGA Comment #2.

NANCY ROYBAL COMMENTS

NANCY ROYBAL COMMENT #1 – Insufficient Notice

I have many concerns about water use associated with cannabis cultivators in Butte County.

RESPONSE: The Tentative General Order for Cannabis Cultivation uses Discharge Prohibitions and the implementation of Best Management Practices to reduce and eliminated discharges of waste from Medicinal Cannabis Cultivation Activities. Specifically, it requires cannabis cultivators to implement water conservation practices to reduce the need for water diversions and the pumping of ground water during the dry/growing season.

A VERY CONCERNED CA. CITIZEN COMMENTS

A VERY CONCERNED CA. CITIZEN COMMENT #1 – Central Valley Water Board Should Not Regulate Discharges from Cannabis Cultivation

The Tentative General Order should not be adopted and the Central Valley Water Board should not regulate discharges from small gardens and orchards, including cannabis cultivation activities.

RESPONSE: Any person who discharges wastes in the State of California that could affect the quality of waters of the state has a legal obligation to file a report of that discharge with a Regional Water Board, unless the Board specifically waives that requirement. Upon receiving a report of the discharge, the Board has a non-delegable duty to prescribe requirements that will ensure that the discharge will comply with the applicable water quality control plan and will not result in pollution or nuisance. These requirements make it impossible for the Water Boards to turn a blind eye towards discharges from cannabis cultivation sites, because there is extensive

evidence demonstrating that these discharges can and do affect the quality of waters of the state.

Other Central Valley Water Board Modifications to Tentative Permit

In addition to the modifications discussed above, Water Board staff has made the following additional modifications to the tentative permit: