Hezekiah Allen, Executive Director
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www.emeraldgrowers.org

May 11, 2015

To: Mathias St John, Executive Officer, North Coast Regional Water Quality Control Board

RE: Support in Concept for Draft Order No. 2015-0023

I am writing today on behalf of the Emerald Growers Association to express our excitement at the release of Draft Order Order No. 2015-0023.

The Emerald Growers Association is a rapidly growing association of small cannabis farmers throughout the state. We have many members and supporters that will be directly impacted by the draft order. Our advocacy work is focused on ensuring realistic pathways to a well regulated marketplace for small craft farms.

We have begun our initial review with a 30 minute dialog on a conference call with our 15 member regional policy council. I am writing to say that we find a lot to celebrate in the specifics of the order.

We will continue our review and provide more detailed commentary if we find it necessary. We are available to consult as needed.

A few things to highlight about the draft order that are consistent with our general advocacy work and our recommendations for this particular program:

- **Tiered business licensing:**
  - *"18. Dischargers fall within one of the above three tiers..."*
- **Third Party Certifiers:**
  - *"21. Third Party Programs-Tier 1 and 2 Dischargers have the option to participate and comply with this Order through an approved, third party program…"*

We had some fun over the weekend and prepared a draft document that we think will help empower our membership to participate in the program. Please find the attached "program guide." We welcome comment from the water board and water board staff before we distribute these documents to our membership. Our board is discussing the possibility of creating a new "class" of membership that may function as a third party certifier program. We have made no decisions regarding our intent to develop a third party certification program for members but we are exploring the possibility.

We also strongly encourage other community groups, from economic development organizations and businesses alliances to watershed councils and consultants to start thinking critically about how to best develop effective third party certifiers.

- **Still a risk for small farmers**
  - "9. This Order does not in any way authorize, endorse, sanction, permit or approve the cultivation, possession, use, sale or other activities associated with marijuana. Individuals

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> engaging in marijuana cultivation and other activities risk prosecution under federal, State, or local law."

We think this language is perfectly appropriate. However, it does highlight a factor that inhibits the transition to regulation: lack of a statewide regulatory framework leaves farmers at risk (or perceived risk) when they engage with state agencies. We are not suggesting changes, merely noting the continued challenges of regulatory uncertainty and hoping the regional water board and other state agencies will continue to be sensitive to the reality of risk associated with operating a cannabis business.

We do have a few concerns about the order:

- **Legacy impacts**

We request greater specificity regarding timeline for implementing resource protection plans as they relate to legacy impacts. This is particularly concerning for cottage industry and specialty farms on properties with significant legacy impacts.

Since cannabis farmers are not currently able to access grant funding and technical support resources that other landowners use to address major legacy impacts, we are requesting that the program be clear that participation in the program will not depend on complete mitigation/ remediation of all legacy sites.

- **Tier 1 is restricted to few farms to effectively mitigate water quality impacts. In order to be successful the program must offer lower barriers to participation for more farms.**

Our group advocates for a tiered business licensing scheme that is flexible, allowing "small commercial" farms to up to 100 plants or almost ¼ of an acre (10,000 square feet).

By allowing both square footage and plant count we accommodate small farmers using time honored traditional methods, growing large outdoor plants from seed while also encouraging innovation and conservation of techniques like light dep and greenhouse cultivation that often depend on clones.

We propose flexibility guided by the following ratio: 1 plant = 100 square feet.

Other cannabis community groups propose different limits:

- Several groups in Mendocino are advocating for 50 plants. Groups include Mendocino Cannabis Policy Council, the Small Farmers Association, and many of EGA's members.
- Mendocino EGA is advocating for a flexible system: 50 plants or 5000 square feet
- Farmers throughout the state advocate for 99 plants
- California Cannabis Voice Humboldt has been a leader in the policy dialogue, with 10,000 square feet being an important threshold in many of their drafts

We strongly encourage the water board to embrace a more flexible and productive limitation on participation in Tier 1. Consistent with our ongoing advocacy throughout the state, on behalf of our

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membership, and the hopes of a more expeditiously implemented program, we respectfully request consideration of the following amendment:

"Program Framework

17. In order to prevent and/or address poor water quality conditions and adverse impacts to beneficial uses associated with marijuana cultivation on private land, any landowneror operator cultivating marijuana that results in a discharge of waste to an area that could affect waters of the state (including groundwater) will fall within one of three tiers depending on the nature of their operation and risk to water quality.

> *Tier 1:*
> *The first tier is for dischargers with low risk to water quality based on certain physical characteristics of the operation such as slope, proximity to surface water, and scale of the operation. Specifically, slopes are no more than 35%, cultivation areas are no more than ~~2000~~ 100 plants or 10,000 square feet. No cultivation areas or associated facilities are located within…'*

We would like to note that this will not automatically authorize the growing of up to 10,000 square feet. The specific limitations on cultivation will still be subject to state and local regulations and statutes.

- **Water Use Plans**

We think all covered farms should be required to develop and implement a water use plan. As written the draft order only requires Tier 2 and 3 farms to develop a water us plan. Given the realities of 21stcentury water scarcity in CA, we think all farmers should be required to develop plans as described in the draft order:

> *"Water Use: Plan shall record water source, relevant water right documentation, and amount used monthly. Plan must describe water conservation measures and document approach to ensure that the quantity and timing of water use is not impacting water quality objectives and beneficial uses (including cumulative impacts based on other operations using water in the same watershed). Water use will be presumed to not adversely impact water quality under one of the following scenarios:*
>
> *No surface water diversions from May 15-Oct 31.*
>
> *Water diversion pursuant to a local plan that is protective of instream beneficial uses.*
>
> *[Placeholder for other options] (e.g., % of flow present in stream; riffle depth; gage at bottom of Class I stream; AB2121 equations; DFW flow recommendations; promulgated flow objective in Basin Plan)"*

We are brainstorming and develop other possible options and will share them if/when we think of some.

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Thank you for this exciting work. We look forward to continuing to collaborate with you as we move toward a healthy, sustainable, well-regulated and legal cannabis future.

Best regards,

Hezekiah Allen

Executive Director

CC: Diana Henrioulle, Senior Water Resources Control Engineer Program Manager, North Coast Regional Water Quality Control Board
Connor McIntee, Environmental Scientist, North Coast Regional Water Quality Control Board
Casey O'Neill, Board Chair, Emerald Growers Association
Kristin Nevedal, Board Vice Chair, Emerald Growers Association
Sequoyah Hudson, Board Treasurer, Emerald Growers Association
Jamie Kerr, Chair, Regional Policy Council, Emerald Growers Association

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5/3/2015

A Program Guide

Helping Small Farmers and Community Partners Implement California Regional Water Quality Control Board North Coast Region Order No. 2015-0023

Emerald
WWW.EMERALDGROWERS.ORG

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Purpose

The purpose of this program is to provide a water quality regulatory structure to prevent and/or address poor water quality conditions and adverse impacts to water resources associated with commercial cultivation of cannabis on private land. Under this Program, any landowner or operator cultivating cannabis that results in a discharge of waste to an area that could affect waters of the State (including groundwater) will fall within one of three tiers depending on the nature of their operation and risk to water quality.

This Program does not apply to operations or grows of no more than 12 immature or 6 mature plants (up to 600 square feet of cultivation area) and where there is no potential for discharge of waste.

Covered Discharges

Discharges and related controllable water quality factors from the following activities covered under this Program include:

- Maintenance of developed areas and drainage features.
- Stream crossing maintenance and improvement, including culvert sizing and installation, non-culverted stream crossing installation, culvert cleaning, culvert improvement and repair, and culvert and non-culverted stream crossing replacement.
- Activities within and adjacent to wetlands and riparian zones.
- Spoil storage and disposal.
- Water diversion, storage, and use.
- Irrigation runoff from cannabis cultivation and other similar growing operations.
- Fertilizer, soil amendments, petroleum products, biodiesel, and pesticide/herbicide/rodenticide storage, use, and waste disposal.
- Waste handling and disposal, including empty soil/soil amendment/ fertilizer/pesticide bags and containers, empty plant pots or containers, dead or harvested plant waste, spent growth medium, and other cultivation-associated wastes.
- Household refuse, human waste and domestic wastewater.

DRAFT

A TIERED PROGRAM

In order to prevent and/or address poor water quality conditions and adverse impacts to beneficial uses associated with cannabis cultivation on private land, any landowner or operator cultivating cannabis that results in a discharge of waste to an area that could affect waters of the state (including groundwater) will fall within one of three tiers depending on the nature of their operation and risk to water quality.

Tier 1:

The first tier is for dischargers with low risk to water quality based on certain physical characteristics of the operation such as slope, proximity to surface water, and scale of the operation. Specifically, slopes are no more than 35%, cultivation areas are no more than XXXX square feet or XX mature plants. No cultivation areas or associated facilities are located within 200 feet of a surface water (i.e., wetland, Class I, II, or III streams). Tier 1 Dischargers do not directly divert surface water from May 15 through October 31.

Tier 2:

Tier 2 is for dischargers with operations that present a higher threat to water quality and water resources. The site does not meet the characteristics of Tier 1, or the site meets the Tier 1 characteristics but does not meet standard conditions. Tier 2 Dischargers must develop and implement a water resource protection plan that includes management measures to be implemented to meet standard conditions.

Tier 3:

The third tier is for dischargers with sites requiring cleanup, restoration, and/or remediation based on current or past land development/management activities that have resulted in a discharge or threatened discharge in violation of water quality standards. Such conditions may include, but are not limited to, filled watercourses or wetlands, perched fill, steep cut slopes, roads, or fill prisms that cannot be stabilized sufficiently to prevent erosion and sediment delivery to surface waters (either on or off site). Tier 3 Dischargers must develop and implement a cleanup and restoration plan as detailed in this Program at section I.C., and comply with applicable standard conditions.

Best Management Practices

This Program requires Best Management Practices. Farmers will employ a variety of methods to control of erosion and drainage features, proper soil disposal, proper stream crossing parameters, water conservation, proper storage and handling of fertilizers and soil amendments, refuse and human waste, and petroleum products and other chemicals, and riparian management and protection.

Our Third Party Program

The Emerald Growers Association is pleased to announce a third party certification program for our members. Our program will:

- Track names of participating dischargers
- Collect and submit required fees
- Conduct an annual site visit for Tier 2 Dischargers
- Submit an annual report to the water board detailing progress and compliance at a programmatic level
- Publish an annual directory of all "Water Wise" farmers that are participating in the program and wish to be included in the directory (even those not enrolled in our program)
- Ensure that the association will be notified at least 48 hours in advance of any compliance action involving the state or regional water board that is planned for a member farm.
- Develop water resource protection plans
- Develop water use plans
- Develop comprehensive community plan which individual dischargers agree to abide by
- Assisting dischargers in implementing water resource protection plans

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Compliance Assistance and Enforcement

In its early stages of implementation, Regional Water Board staff will be focused on coordination and cooperation with dischargers to help inform the community of the Program's requirements.

Our program will actively collaborate with Regional Water Board staff.

Regional Water Board staff will be available to assist dischargers with complying with standard conditions, upon request.

Site Inspections and Technical Assistance

Program staff will conduct onsite inspections to assess compliance with conditions, and provide technical assistance or guidance, where necessary.

Staff will conduct a certain amount of routine inspections on a yearly rotation and with the goal of eventually having some communication with every site.

Individual sites to inspect are generally prioritized based on threat to water quality, amount of land disturbance, proximity to watercourses and wetlands, presence of ponds, observed or reported instream impacts, and other factors and characteristics that suggest significant threat or impact to waters of the state.

Non-Compliance and Enforcement

The Regional Water Board prefers that water quality impacts be regulated under this Program to the extent possible.

However, if staff encounters a recalcitrant or uncooperative discharger, is denied access to an affected property, does not receive timely communication, or identifies serious violations, the Executive Officer may require the discharger to submit a Report of Waste Discharge (ROWD) or take other actions as appropriate, including alerting the local law enforcement and other state agencies.

Timeline

Tier 1, 2, and 3 Dischargers apply for coverage by submitting a completed application and paying required fees

- For Tier 1 Dischargers the process is done after an initial site visit certifying that the farm meets the Tier 1 guidelines.
- For Tier 2 shall a water resource protection plan will be completed within 60 days of submitting a completed application. On-site inspections will take place once a year.

The entire process takes just a few months and only 1 or 2 site visits.

Fees

TBD

Planning, Monitoring and Reporting

Plans can range from a simple description of the management practices to be implemented, to comprehensive descriptions of existing sources of waste discharge and elevated water temperatures, management practices employed to control the sources, and a monitoring and reporting program to document actions taken to control the sources and the effectiveness of such actions. The level of detail required in a plan will be dependent on the site-specific characteristics of an activity/operation. Plans must be kept available on the site and subject to inspection. As a participant in our third party program you will receive technical support through all stages of planning, monitoring and reporting.

Participation in the program includes an initial site visit and annual monitoring visits and a professionally prepared annual report.

All participants in the program will be required to keep a "Water Use Plan."

Contact

For more information, contact:
info@emeraldgrowers.org

www.emeraldgrowers.org

DRAFT

From: sequoyah@cannassert.com [mailto:sequoyah@cannassert.com]
Sent: Wednesday, May 27, 2015 9:55 AM
To: NorthCoast
Subject: Draft Order R1-2015-0023

Hello there,

I am writing to you today to express some concerns and ask a few questions regarding your draft waiver for discharge relating to marijuana cultivation.

My questions & comments are as follows:

How do you determine if you are a discharger required to report to begin with?
Is it merely if there is discharge within the specified feet of a creek? In this case 100-200'.
So, if your garden is more than the specified feet away from a stream than you do not need to enroll?

The restrictions suggested are not enforced on other types of agriculture in California. Why for cannabis?
At this point, cannabis IS NOT EVEN recognized as an agricultural product. Do you have any plans to have it recognized as such, so you can continue to refer to it as 'agriculture'?

The sq ft threshold is totally arbitrary and doesn't reflect any relative amount. It seems with so many water regulatory mechanisms in place there could be some sort of consistency/relativity. This also seems to be confusing for the 'layman' trying to navigate their way through compliance. Is there anyway to have these various agencies 'cross enroll' - or something similar that would require one permit application, that would then be passed through any water regulatory departments and coming out with whatever permits are required? Similar to what they do at the building dept, You submit one application that is then passed around to all regulatory agencies (Environmental Health, Planning, Fire Dept, etc...) before coming out with your building permit. Just a thought!!!

It also is my understanding that other discharge programs begin at a threshold of an acre, why is it so low for cannabis?

Finally, I am hearing that cannabis farmers are concerned that you are requiring them to identify themselves as cannabis farmers, and therefore potentially SELF INCRIMINATING themselves. This seems to be an inhibiting factor for voluntary enrollment. I understand from the Eureka meeting that is why you are offering the 'voluntary enrollment' option, but this doesn't make sense either. Why would you be enrolling in a 'Marijuana Discharge' program if you WERE NOT a marijuana cultivater....

Thank you for your time in addressing these concerns.

Sequoyah Hudson
California Cannabis Voice - Humboldt

Emerald Growers Association
CannAssert, LLC

Comments Related to Order No. 2015-0023
By Dan Mar of High Tide Permaculture
Humboldt County

Overview

- #5. "or mitigate these impacts": list potential strategies to mitigate or control.

Program Framework

- #17: "no more than 2,000 square feet": I see Tier 1 as an incentive in this ordinance. I have clients who are beyond 2,000 square feet but their risk to water quality is extremely low and they meet all the other parameters, lower than some sites I've visited that were less than 2,000 square feet. Therefore I recommend that this parameter be removed from Tier 1 so it can be more inclusive and more incentive based. If you stay with parameter then give specifics on how to measure.
- Footnote #8: need a list of plants that would fit the classification.
- Footnote #9: cross reference the "criteria" for expedited process.

A. Standard Conditions

- 2.a. 100-year expected flood: make data table available for property owners to measure their culvert and compare to know if they are not compliant.

I think the draft is great. I appreciate seeing language from many of the meetings and stakeholder comments over the past year. I truly believe that this ordinance can move cultivators towards being as least impactful as possible if we continue with education and outreach and empowering property owners with the information and skills.

Thanks for the opportunity to be a part of the process and here's to protecting watersheds!

Best,
Dan Mar

AmericansFor SafeAccess

Advancing Legal Medical Marijuana Therapeutics and Research

June 8, 2015

Regional Water Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Via email - NorthCoast@waterboards.ca.gov

RE: Waiver of Waste and Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation

To Whom It May Concern,

Founded in California in 2002, Americans for Safe Access (ASA) is a national non-profit organization whose mission is to ensure safe and legal access to cannabis for therapeutic uses and research. With a grassroots base of over 50,000 members, ASA works to effect change using public education and direct advocacy at the local, state, and federal level. Our members include medical cannabis patients, primary caregivers, cultivators, processors, distributors, and other stakeholders. Many of our members are directly or indirectly involved in medical cannabis cultivation, or have a stake in the outcome of regulations related to medical cannabis cultivation.

ASA commends the North Coast Regional Water Quality Control Board (NCRWQCB) for taking the time and investing the energy necessary to help protect the North Coast regions fragile and diverse watersheds. However, we have serious concerns regarding the focus, restrictions, and overall benefits of the draft Waiver of Waste and Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation.

According to Water Board estimates, " [T]there are approximately 350,000 acres of agricultural lands in the Region, which are primarily used for vineyards, orchards, row crops, grain, alfalfa, hay pasture, and dairies. The acreage used for cannabis cultivation is currently unknown. Additionally, livestock grazing occurs on rangeland throughout the Region."[i]

In 2011 the Water Board established Agricultural Discharge Working Groups in multiple regions with the intention of creating a sensible Agricultural Discharge program for all irrigated lands. To this date the only other agricultural discharge program to be developed by the Water Boards is for dairy operations. Discharge programs for other, more widely produced, agricultural crops appear to be on hold in order to focus on cannabis, which makes up a very small portion of agriculture in the North Coast Region.

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The current draft proposal for Discharges of Waste Resulting from Marijuana Cultivation does more than act to regulate the"...irrigation runoff from cannabis cultivation and other similar growing operations". Once enrolled in the program landowners also become responsible for discharges related to developed areas and drainage features including all roads; stream crossings and culvert maintenance; and household refuse, human waste, and domestic wastewater. This program also acts to regulate water diversion, storage and use.

As California's watersheds have been hard hit by drought, it is easy to point the finger at cannabis cultivation as a primary culprit of water quality, especially since it is known to be a significant agricultural crop in California and is yet to be regulated. However, when we look at the facts, it is hard to understand why the other crops mentioned are not required to enroll in the Agricultural Discharge Program. When compared side by side with the water use of other crops, it becomes apparent that cannabis cultivation plays a rather small roll in water use on the North Coast. It is estimated that the total water use for California's licit and illicit cannabis cultivation is roughly 12,000 acre-feet per year, compared to tomatoes which use 1.7 million acre feet per year, grapes at 2.2 million acre feet per year, and almonds at nearly 3.7 million acre feet of water per year.[ii]

Of course, there is no denying that cannabis cultivation is often occurring in remote areas, on unstable lands in the North Coast region, and that rural landowners often collect household and agricultural water from ground water sources such as springs, creeks, rivers, and wells. However, as State agencies have monitored stream flows in cannabis cultivation areas, there has been no mention of the upstream diversions, sanctioned by the State, to supply copious amounts of household and agricultural water to the southern portion of the Region.

ASA is concerned that this program creates a double standard in agricultural regulation. As currently written, the NCRWCQB's Discharges of Waste Resulting from Marijuana Cultivation program will require that all cannabis cultivators, growing more than six mature plants or twelve immature plants, enroll in the discharge program. The program, however, is voluntary for landowners who cultivate crops other than cannabis, regardless of scale.

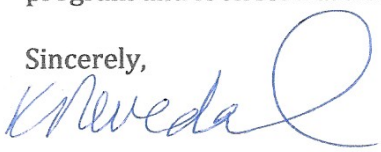
ASA strongly opposes the singling out of medical cannabis farmers and respectfully requests that this program be amended to create a more reasonable threshold for entry and that the scope be expanded to include ALL irrigated agricultural operations. If cannabis farmers must enroll at seven mature plants, then why not ask the same of landowners with irrigated orchards, row crops, vineyards, etc? The health and well being of the North Coast's watersheds is the responsibility of the entire agricultural community, not just that of the medical cannabis community.

Additionally, we find that the ceiling proposed for compliance in Tier 1 is exceptionally low, at 2,000 sq ft. We also recommend that the floor for entry, six mature or twelve immature plants, be raised and expressed as square footage. Specifically, we suggest raising the threshold for enrollment to 1,000 square feet and raising the ceiling for Tier 1 to at least 5,000 square feet. Again, in order to make this program an affective effort for environmental protection, enrollment should be mandatory for ALL irrigated agricultural lands.

As currently written, this program requires cannabis cultivators to disclose personal identifying information, including location, and does NOT allow enrollment as an anonymous crop producer. Broadening the scope of this program to require enrollment for all irrigated agricultural production will allow cannabis farmers to enroll without having to disclose the specifics of the crop being produced and increase the effectiveness of the program on improving the Regions water quality.

We thank the Water Board for the opportunity to participate in the shaping of this program and look forward to seeing changes in the next draft.

Sincerely,



Kristin Nevedal
Director of Patient Focused Certification
Americans for Safe Access

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[i] http://www.waterboards.ca.gov/northcoast/water_issues/programs/agricultural_lands/

[ii] http://www.canorml.org/news/on_water_and_weed.html

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To: North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A Santa Rosa, CA 95403
Connor.McIntee@waterboards.ca.gov

From: Bonnie Blackberry
President, Civil Liberties Monitoring Project
PO Box 544 Redway, Ca 95560
bonnie@civilliberties.org

June 8, 2015

Re: Comments to the Notice of Intent to Adopt a Mitigated Negative Declaration and Draft Order R1-2015-0023 Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region

Dear North Coast Regional Water Quality Control Board:

1. **Large mega grows and lack of enforcement.** There are laws for water diversion and use, grading, and waste discharge in streams. State agencies charged with protecting streams, fish and wildlife - the Department of Fish & Wildlife and State and Regional Water Boards - already have legal tools to protect the environment, including stream flows, and impacts from grading and agriculture.

Recommend: Focus resources on large mega grows and biggest violators with current regulations and laws for greatest results in addressing poor water quality conditions and adverse impacts to water resources associated with marijuana cultivation on private land.

2. 5th Amendment: This Order requires people who cultivate more than 6 marijuana plants to give up their 5th Amendment protection to not incriminate themselves, and sign up, pay a fee, and admit to , and provide documentation of a federal crime. As long as marijuana is regarded as crime by the federal government it's not fair or reasonable to have this as a requirement.

Recommend: Certification program should be voluntary.

3. "Operations with similar environmental effects" is not defined and is too ambiguous. Whatever these undefined operations are, they are not required to register. This causes one to question if the focus is really on water quality and discharge or a bias against marijuana cultivation.

Recommend: Equal treatment, as it is not fair or reasonable to single out marijuana.

4. Forbearance requirement for Tier 1 requiring use of stored water for ALL beneficial uses, including household domestic use from May15 to Oct 31, ONLY IF, more than 6 marijuana plants are cultivated. No other agricultural crop has a forbearance requirement/standard which includes domestic use, and I'm not aware of forbearance as a required standard for any other agricultural operation. This provision is both unfair and unreasonable, and shows a bias against marijuana as well as creating another deterrent to getting any person who has rights to, and use of year round spring water to "elect to enroll".

Recommend: Remove household and regular domestic water use from this regulation which is already covered by the Water Rights Control Board. Focus on discharges from cultivation of commercial operations.

5. Exemption from the program if growing 6 mature or 12 immature or less is ridiculous. Calling a small garden with 7 plants an "operation" needing extensive regulations, permits and monitoring doesn't make sense.

Question: What criteria was used to determine that cultivating 7 or any particular number of marijuana plants will likely to create discharges which degrade water quality?

Recommend: Start with voluntary enrollment. If there are environmental problems caused by any cultivation, there are current regulations to deal with it. Focus effort and resources on the commercial operations and violators causing the greatest harm, which would be more effective in protecting our watersheds.

6. Setbacks of 200 ft is unreasonable, unfair and not necessary for small cultivation sites. Is this a standard for any other agricultural crop or just for marijuana? Any site no matter how large or small, growing marijuana or anything else that is causing harm to water quality and/or stream flows already have

enforceable regulations which unfortunately have not been acted upon. It appears that the setbacks for marijuana cultivation is greater than what is required for logging and other agriculture. Another example of a unfair bias against marijuana.

> **Recommend:** 100 ft setbacks is more reasonable unless other on-site factors cause that to not be effective.

7. Legacy environmental destruction restoration requirement if more than than 6 marijuana plants are cultivated on the property is not reasonable or fair.

> **Recommend:** The State of California should fund and work with landowners on environmental restoration where damage was done to the land/environment by the logging industry, approved by the government. Not fair to require current landowners to bear this cost from previously State condoned logging industry damage. And even more unfair is attaching that requirement to marijuana cultivation.

In closing, these requirements are far beyond standard requirements for all other agricultural operations in California. Equal treatment under the law needs to be considered. This approach for regulating marijuana cultivation discharges is similar to going after jay-walkers while cars are speeding through the middle of town going 100 miles an hour. One would think the speeding vehicles (biggest violators) would be dealt with BEFORE focusing on the jay-walkers.

Hopefully the Order will be modified so that it is more reasonable, effective and fair.

Respectfully submitted,

Bonnie Blackberry
President, Civil Liberties Monitoring Project
PO Box 544 Redway, Ca 95560
bonnie@civilliberties.org

CALIFORNIA COASTKEEPER ALLIANCE

June 8, 2015

Chair John W. Corbett and Board Members
North Coast Regional Water Quality Control Board
5550 Skylane Blvd, Suite A
Santa Rosa, CA 95403

Sent via electronic mail to: northcoast@waterboards.ca.gov

RE: Comment Letter – DRAFT Marijuana Waiver for the North Coast Region

Dear Chair Corbett and Board Members,

On behalf of California Coastkeeper Alliance ("CCKA"), which represents twelve California Waterkeeper groups spanning the California coast from the Oregon border to San Diego, we appreciate the opportunity to provide comments on the North Coast Regional Board's ("Regional Board") Draft Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region ("Draft Waiver"). CCKA and our network of California Waterkeepers are actively involved in developing solutions and strategies to address the pervasive impacts of unregulated marijuana cultivation in the state, particularly as it affects the watersheds of Russian Riverkeeper, Humboldt Baykeeper, and Klamath Riverkeeper in the North Coast Region.

Extensive research, including work published from the State Water Resources Control Board (SWRCB)[1] and the California Department of Fish and Wildlife (CDFW)[2], has conclusively documented serious, systemic, and intensifying impacts of unregulated marijuana cultivation on ecosystems and water quality across watersheds in the state. While unregulated marijuana cultivation's issues are most acute in the North Coast Region, water quality impacts can be found throughout California where land is cheap, remote, and accessible to water.[3] We support the Regional Board's urgent work to address this issue and to develop crucial protections for water quality in the North Coast Region, while establishing a regulatory framework that can be adopted by regional board's statewide.

CCKA supports many of the Regional Board's proposed measures for the Draft Waiver. We see these provisions as establishing reasonable approaches to protect water quality without discouraging compliance among actors known for their trepidation of government agencies. As described in detail below, CCKA encourages the Regional Board to retain the provisions of the Draft Waiver that:

- Require at least a 100 foot buffer zone between Tier 2 cultivation operations and surface waters;
- Require road maintenance standards;
- Prohibit surface diversions from May 15th to October 31st;
- Adopt the approach of a multi-tiered classification system for marijuana cultivators; and

[1] State Water Resources Control Board. "Marijuana Cultivation on the North Coast Threatens Water Quality and Wildlife." (2013). http://www.waterboards.ca.gov/northcoast/publications_and_forms/available_documents/pdf/2013/130611_MarijuanFactSheet.pdf

[2] Bauer, Scott, Jennifer Olson, Adam Cockrill, Michael van Hattem, Linda Miller, Margaret Tauzer, and Gordon Leppig. "Impacts of surface water diversions for marijuana cultivation on aquatic habitat in four northwestern California watersheds." PloS one 10, no. 3 (2015): e0120016.

[3] http://www.latimes.com/opinion/op-ed/la-oe-0413-bauer-pot-20150413-story.html.

- Allow for the use of a third party program to help meet requirements of the Draft Waiver.

The Regional Board should also make key changes to the Draft Waiver to fully safeguard water quality and protect beneficial uses. As described in detail below, the Regional Board should revise the Draft Waiver to:

- Adopt a Permit Fee Schedule that will entirely finance all costs associated with fully protecting water quality from the impacts of marijuana cultivation;
- Ensure Tier 1's 2000 square-foot maximum size threshold applies to both areas cleared for cultivation and to all associated growing infrastructure;
- Place pesticide and herbicide thresholds upon marijuana cultivators that would automatically exclude them from coverage as Tier 1 growers;
- Reduce the maximum allowable slope in Tiers 1 & 2 to 20 percent;
- Extend the surface diversion prohibition season during declared drought emergencies;
- Require documentation of water delivery trucks, and limit their use to only those that can demonstrate a clear and legal right to water used;
- Clarify the definition of both "associated activities" and "other similar growing operations".

A. THE REGIONAL BOARD SHOULD RETAIN THE PROVISIONS THAT PROTECT WATER QUALITY, ENSURE GROWER COMPLIANCE, AND MAXIMIZE LIMITED ENFORCEMENT RESOURCES.

We strongly support many of the Regional Board's proposed measures for the Draft Waiver. The retention of these provisions will play a critical role in developing a workable Draft Waiver that establishes the key protections necessary to safeguard water quality, while implementing necessary strategies to maximize limited resources and encourage both coverage and compliance.

1. *The Regional Board should retain the requirement that Tier 2 cultivators maintain riparian buffers of at least 100 feet between operations and surface waters.*

Riparian buffers between marijuana cultivation operations and surface water, properly maintained with native vegetation, are an effective and environmentally beneficial way to minimize the migration of contaminants from grow sites to surface waters. As research by the U.S. EPA has shown, large riparian buffer widths positively relate to effectiveness in preventing contaminants from entering surface waters.[4] For this reason, the requirement for riparian buffers of a least 100 feet for Tier 2 cultivators should be kept in the Draft Waiver to ensure protection from fertilizers, pesticides, and other constituents associated with marijuana cultivation.

2. *The Regional Board should retain all road maintenance standards***.**

As the Regional Board has documented, many water body segments in the North Coast Region have been identified as impaired due to sediment.[5] A significant contributing factor of sediment impairments in rural areas is associated with erosion from improperly maintained private roads.[6] Marijuana cultivation, due to its widely dispersed and remote geography, has greatly increased the propensity of this issue, in both the sheer number of private roads and in the volume of traffic each road sees. The Regional Board must ensure that erosion from private roads does not further compound sediment impairments in the North Coast by retaining the road maintained standards and requirements currently in the Draft Waiver.

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[4] Mayer, Paul M. "Riparian buffer width, vegetative cover, and nitrogen removal effectiveness." U.S. Environmental Protection Agency, (2005).

[5] California Regional Water Quality Control Board North Coast Region. "Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters in the North Coast Region." (2004). http://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/120204-0087.pdf

[6] Lewis, D., J. Harper, and J. Price. "Survey identifies sediment sources in North Coast rangelands." California Agriculture 55, no. 4 (2001): 32-38.

3. The Regional Board should retain the prohibition of surface diversions from May 15th to October 31st.

The North Coast Region, like much of California, is characterized by rainfall patterns that see little precipitation between May and October. Instream flows are desperately needed to maintain fish, wildlife, and other beneficial uses during the summer months. During low flow any surface diversions can have serious impacts on already stressed species and water bodies. California's current drought emergency has underscored the urgency of this issue, as the North Coast Region now frequently witnesses many critical Coho habitat streams run dry during the summer and fall moths. Simply put, in its effort to protect the water quality in the region's streams, the Regional Board must ensure there is water left in streams to protect. For this reason, the Regional Board must protect stream flows and critical ecosystem habitats during dry seasons by retaining the prohibition of surface water diversions from May 15th to October 31st.

4. The Regional Board should retain its multi-tiered classification system for marijuana cultivators.

Growing operations in the North Coast Region vary greatly in size, scope, and intensity. In addition, the sheer number of growing sites estimated to exist in the North Coast Region pose unique coverage and enforcement challenges. Adopting a Draft Waiver with three spate classifications for marijuana cultivators is an innovative approach to these issues, and will allow the Regional Board the flexibility necessary to strategically direct limited resources to operations that pose the greatest risk to water quality in the North Coast Region. For this reason, the Regional Board must retain its proposed multi-tiered classification system to allow for the flexibility necessary to prioritize the worst actors and greatest threats to water quality among the multitude of marijuana cultivators in the North Coast Region.

5. The Regional Board should retain its proposal to use a third party program.

As noted above, it will be necessary for the Regional Board to adopt innovative approaches to address the sheer number of unregulated marijuana cultivation sites in the North Coast. Utilizing a third party program will further allow the Regional Board to implement flexible approaches towards monitoring, certification requirements, and enforcement. To make the most of limited resources, and ensure a focus on the marijuana cultivation sites that pose the greatest risk to water quality, the Regional Board should retain its proposal to utilize a third party program for certain Draft Waiver requirements

6. The Regional Board should retain the limits to Tier 1 classification.

By placing a minimum of regulatory requirements on marijuana cultivators qualifying for Tier 1 classification, the Regional Board ensures limited resources will not be expended on operations that pose little or no risk to water quality. In addition, Tier 1's minimum regulatory requirements incentivize marijuana cultivators to maintain, scale back, or modify operations. It is key that the Regional Board ensure in its classification of Tier 1 sites that qualifying marijuana cultivators maintain operations that pose little or no risk to water quality. For this reason, the Regional Board should retain the standards for Tier 1 classification that place only operations at least 200 feet from surface waters and less than 2000 square feet in total size.

B. THE REGIONAL BOARD SHOULD ENSURE REGULATIONS ARE ENFORCEABLE AND FULLY PROTECTIVE OF WATER QUALITY.

Several key changes and additions to the Draft Waiver are necessary to fully safeguard water quality in the North Coast Region. These changes will ensure the Draft Waiver will properly address the most pressing impacts of marijuana cultivation while building an adaptable framework for enforcement, and ensuring balance with the Regional Board's full scope of responsibilities in protecting water quality in the North Coast Region.

1. *The Regional Board should adopt Draft Waiver fees that will entirely finance all costs associated with fully protecting water quality from the impacts of marijuana cultivation.*

While the impacts associated with marijuana cultivation warrant immediate and focused attention, there is little doubt the full scope of the problem is beyond the limited resources of the Regional Board. In addition, the Regional Board must balance any approach it takes towards marijuana cultivation together with its other responsibilities in protecting water quality in the North Coast Region. The Regional Board cannot seek to improve water quality as it is connected to marijuana cultivation by sacrificing attention away from vineyards, dairies, and other sources of water quality impairment.

To ensure adequate attention towards marijuana cultivation's water quality impacts, while not directing any resources away from other responsibilities, the Regional Board must adopt permit fees that fully account for costs associated with the adoption of the Draft Waiver. The full cost of additional staff, together with costs that will be necessary for adequate enforcement, must be key factors considered in the establishment of permit fees.

In addition, in the establishment of permit fees, the Regional Board should consider the costs abandoned marijuana cultivation sites impose on water quality throughout the region. To fully protect water quality and restore damaged water bodies the Regional Board should structure the permit fees to provide a source of funding for the rehabilitation and restoration of harmful marijuana cultivation where no responsible party can be found.

2. *The Regional Board should ensure Tier 1's 2000 square-foot maximum size threshold applies to both areas cleared for cultivation and to all associated growing infrastructure.*

As has been well documented through the use of Google Earth and other satellite imagery tools, the full scope of marijuana cultivation operations often extends beyond the size of measured marijuana canopies to include associated storage facilities and land cleared of trees and other vegetation. This issue is most acute when large tracks of forest are cleared for the sole purpose of providing sun exposure for marijuana cultivation. Clearing forest canopy, especially near surface waters, has direct negative impacts on water quality. In order to best quantify and assess the size of growing areas as it relates to impacts on water quantity, any cleared forest areas or associated storage facilities should be counted in the Regional Boards 2000 square foot calculation in for Tier 1 growers. Marijuana plants that might measure less than 2000 square feet, but sit upon more than 2000 square feet of cleared forest, should be excluded from Tier 1 classification.

3. *The Regional Board should include pesticide and herbicide thresholds in its criteria for coverage under Tier 1.*

The use of three classifications for marijuana cultivators, and the use of Tier 1 for those who will have little or no impact allows for the Regional Board to focus limited resources on operations that pose the greatest threat to water quality. It is essential that the Regional Board ensures no marijuana cultivators who pose risks to water quality are included in Tier 1. The use of certain pesticides, herbicides, rodenticides, and other chemicals associated with marijuana cultivation should preclude any operation from classification in Tier 1.

4. *The Regional Board should reduce the maximum allowable slope in Tiers 1 & 2 to 20 percent*

To ensure that marijuana cultivators classified in Tier 1 have minimal impacts upon water quality, and that Tier 2 cultivators do to not precipitate conditions that necessitate site restoration, the maximum allowable slope in the Draft Waiver should be reduced from 35 to 20 percent. Soil and geological features found throughout the North Coast Region are often characterized by steep and highly erodible soils. The erosive nature of these land features can be greatly increased if cleared of vegetation or otherwise disturbed by activities associated with marijuana cultivation, contributing to increased sedimentation and other impacts harmful to water quality.

5. *The Regional Board should extend the surface diversion prohibition season during declared drought emergencies.*

The Regional Board's prohibition on surface water diversion from May 15th to October 31st will provide critical protection for streams, fish and beneficial uses. However, as California's current drought emergency has highlighted, a fixed May 15th to October 31st prohibition on surface diversions will not fully protect critically stressed water bodies during times of exceptionally low rainfall. To fully account for the reality of California's frequent drought cycles, and the probability that the state is facing a drier future, the Regional Board should include provisions that will extend prohibitions on surface water diversions during times of extreme drought.

6. *The Regional Board should require marijuana cultivators to document any tanker trucks used for water delivery and limit water deliveries to only those that can demonstrate a clear and legal water right.*

Marijuana cultivation sites have been known to employee the use of tanker trucks to deliver water during times and areas where access to water would otherwise prove infeasible[7]. Aside from hastening road erosion and increasing sediment issues, serious questions need to be raised about where tanker trucks are obtaining their water. To ensure water tucks are not illegally diverting surface water and impacting water quality, the Regional Board should require that marijuana cultivators document the use of water tucks, and demonstrate that tanker trucks have a clear and legal right to water delivered.

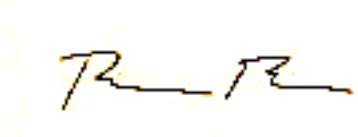
7. *The Regional Board should provide clarification on the definition of both "associated activities" and "other similar growing operations".*

To ensure dischargers engaged in more intensive practices do not opt for coverage under the Draft Waiver in lieu of stricter, more appropriate waivers, the Regional Board should provide clarification on the definition of both "associated activities" and "other similar growing operations".

As dry water bodies and heavily impacted streams make clear, the Draft Waiver is an urgently needed tool to protect and resort water quality in the North Coast Region. We thank the Regional Board for taking steps to develop and implement regulations for marijuana cultivation that will put in place crucial protections for the North Coast Region's unique water bodies, ecosystems, and beneficial uses, while establishing a road map for addressing marijuana cultivation impacts as the issue grows in intensity statewide.

We look forward to continued work together to ensure clean, abundant water for California.

Sincerely,



Rickey Russell
Policy Analyst
California Coastkeeper Alliance

Jennifer Kalt
Director
Humboldt Baykeeper

[7] State Water Resources Control Board & California Department of Fish and Wildlife. "Joint Report to the Legislature on the Department of Fish and Wildlife and State Water Resources Control Board pilot project to address the Environmental Impacts of Cannabis Cultivation (Watershed Enforcement Team)" (2015).

Comments on Draft Waiver of Waste Discharge Requirements for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects (Order No. 2015-0023)

The Environmental Protection Information Center (EPIC) commends the North Coast Regional Water Quality Control Board for taking a leadership role in cannabis cultivation regulation and supports the Board's Draft Waiver. Since 1977, EPIC has worked to to protect and restore ancient forests, watersheds, and native species in northwestern California. EPIC, like many in the community, has grown increasingly concerned about the impact of cannabis cultivation on Northern California's landscape. Below please find EPIC's comments on the Draft Waiver.

Tier Composition:

EPIC supports the tier system as described in the Draft. Tier 1, which is limited to "dischargers with *low risk to water quality* based on certain physical characteristics of the operation." is reasonably capped at 2,000 sq. ft. This number is reasonable for a number of reasons. First, this would likely encompass a majority or a high number of growers. The best available information, based on cannabis production in the Mad River watershed, estimates the average canopy size at 2,300.[1] Second, by capping Tier 1 at 2,000 sq. ft. there will be an incentive to keep operations below that threshold. EPIC is concerned about the proliferation of so-called "mega grows"; solutions to encourage restrained operations are encouraged. Third, compared with other crops, marijuana has an exceedingly high market value in regards to its land usage. Thus, while 2,000 sq. ft. might be small for some other agricultural crops, it is sufficiently large to make a living off if growing cannabis.

EPIC imagines that self-certification in Tier 3 will be rare. EPIC approves of the Board's intention to focus early compliance at larger operations or operations more likely to adversely affect water quality.

[1] http://www.northcoastjournal.com/humboldt/the-revolution-starts-here/Content?oid=2780681

Development of Water Use Plans:

As contemplated in the Draft, only Tier 2 and Tier 3 are required to develop water use plans under I.B.7. However, such planning documents should be required for all operations.

A water use appears necessary to ensure that a Tier 1 producer has sufficient water storage to make it through the dry period of May to October. Without a use plan, it would be difficult or impossible for Water Board staff to adequately vet whether a cannabis producer has sufficient storage. For example, plant density, potting, irrigation method, estimated plant size, and other factors would influence the amount of water storage necessary. If a water board employee were to visit the operation early in the growing season, it would be difficult to assess whether the operation had sufficient storage without a use plan.

EPIC is heartened to see that the Emerald Growers Association also recognizes the need for all cannabis cultivators to develop a use plan.[2]

Required Storage:

Failure to store adequate water for agricultural and domestic use has profound impacts on North Coast waters, particularly during low flow periods. As described in Bauer et al. (2015), water demand from cannabis production may even exceed streamflow during low flow periods.[3]

EPIC supports required water storage for Tier 2, not just Tier 1 operations. Inadequate storage should thus be a criteria for Tier 3 operations such that growers in Tier 3 must develop a plan to come into compliance. EPIC understands that the Board's power is somewhat constrained in this as the Board may only regulate water consumption as it relates to water quality. However, because the cumulative impacts of water withdrawals are so difficult to quantify, anything but required storage places at risk water quality. The Board should take a cautious approach and require water storage for all operations under this waiver.

Section I.A.5.c, page 15, states that "[f]or Tier 2 Dischargers, *if possible*, develop off-stream storage facilities to minimize water diversion during low flow

[2] http://www.emeraldgrowers.org/initial_letter_waiver

[3] Bauer S, Olson J, Cockrill A, van Hatttern M, Miller L, Tauzer M, et al. (2015) Impacts of Surface Water Diversions for Marijuana Cultivation on Aquatic Habitat in Four Northwestern California Watershed. PLoS ONE 10(3): e0120016. doi:10.1371/journal.pone.0120016

periods." Further, I.B.7. directs that compliance could also be achieved by "a local plan that is protective of instream beneficial uses" or some other metric not yet developed, such as percentage of flow present in stream. EPIC feels that this is the wrong approach. All operations should be directed to develop a water *storage* plan. Only in this manner can the North Coast region effectively ensure the protection of instream beneficial uses.

Section I.B.7. states that a water plan must "ensure that the quantity and timing of water use is not impacting water quality objectives and beneficial uses (including cumulative impacts based on other operations using water in the same watershed)." Based on EPIC's experience, cumulative impacts are difficult to adequately document. As a result, impacts are inadequately addressed and we face a familiar situation to one we now face: death by a thousand cuts. The only way to ensure that cumulative effects are minimized is by requiring adequate storage. EPIC recommends that Tier 2 dischargers be required to show sufficient storage for both agricultural and domestic use. Inadequate water storage should be a criteria of Tier 3 operations, and as such, operations which lack sufficient water storage should be required to develop an action plan to come into compliance.

Furthermore, the Draft is silent about the use of bulk water delivery. Bulk water delivery is not an alternative to on-site water storage. In recent years, bulk water sales have increased in Humboldt County to supplement inadequate storage. However, these sales have come at a steep cost to the community:[4] water theft forces local communities to run pumps and filters more heavily, pushing infrastructure to near breaking points; as a result of theft, water storage for many communities has run dangerously low, risking the ability of local fire departments to respond to fires; and due to their heavy loads, increased use of water deliveries have taken a toll on area roads. EPIC recommends that the Water Board address the use of bulk water delivery in future drafts.

Compliance and Program Funding:

<u>The success of the waiver to meet water quality objects is dependent on compliance assistance and enforcement.</u> Without enforcement, the self-reported tiered system would become unworkable: cultivators could apply under the wrong

[4] See, e.g., http://lostcoastoutpost.com/2013/aug/25/loco-pot-sohum-water-debacle-part-2/; http://www.redwoodtimes.com/general-news/20130716/myers-flat-suspends-bulk-water-sales; http://www.redwoodtimes.com/general-news/20131106/loss-of-sources-drives-up-costs-of-water-in-southern-humboldt/1; http://www.northcoastjournal.com/humboldt/point-of-no-return/Content?oid=2673946.

tier or risk ignoring the regulatory system altogether. This risk is especially acute in the cannabis cultivation arena where one persons are already risking federal law in growing marijuana and where a banner year can encourage a "get rich and get out" mentality from some producers. In short, to ensure compliance, the program will demand sufficient staff to complete routine inspections. As stated in finding 22, page 8, the Water Board's "goal" is eventual "communication with every site." This is a worthy, but expensive, goal. This cost may be tempered through the use of third party programs to certify compliance.

EPIC supports robust fees or other measures sufficient to adequately fund program staff. EPIC further notes that an initial allotment of funds is likely necessary to supplement fees while the project implementation is in its infancy.

Third Party Programs:

EPIC is cautiously optimistic about the use of third parties to meet the requirements of the Draft. We understand that participation in the program carries risks to cannabis cultivators and acknowledge that program compliance would likely increase if cannabis cultivators may participate through an approved non-governmental third party program. Third party programs may be especially valuable to Tier 2 and 3 operations, enabling experienced professionals from third parties to offer advice on best practices to potentially enable growers in these tiers to move to a lower tier.

That said, EPIC expects that future drafts will flesh out the Board's third party approval process more thoroughly.

Conclusion

Thank you for the opportunity to comment on the Draft Waiver. EPIC commends the Water Board for taking bold leadership on this important issue. We look forward to working together in the future.

FRIENDS OF THE EEL RIVER

Working for the recovery of our Wild & Scenic River, its fisheries and communities.

June 8, 2015

Matthias St. John
Executive Officer
North Coast Regional Water Quality Control Board

by email

Re: Comments on Draft Order R1-2015-0023, Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region

Dear Mr. St John,

The following comments are offered on behalf of the board, staff, and supporters of Friends of the Eel River. FOER advocates for the protection and restoration of our Wild and Scenic Eel River, with a focus on the fisheries that are the keystone of ecosystem health in our watershed.

Although we are unable to support the proposed program in its current form, we do very much appreciate the Regional Board staff's thoughtful and realistic approach to the complex problems raised by the increasing and severe watershed and fisheries impacts associated with marijuana cultivation in the Eel River watershed and across the North Coast. The proposed waiver is an important step in the right direction. That it is not adequate to fulfill the Board's duty to protect water quality and beneficial uses is largely a consequence of the agency's lack of capacity to implement and enforce it.

As the Draft Waiver accurately notes, increased marijuana cultivation throughout the North Coast Region since passage of Prop 215 and AB 420, but especially over the last decade, "has resulted in significant waste discharges and a loss of instream flows associated with improper development of rural landscapes on privately-owned parcels, and the diversion of springs and streams, to the cumulative detriment of beneficial uses of water." Even this alarming summary may understate the magnitude and severity of our present challenges. The ongoing boom in the number and size of marijuana cultivation operations, and accompanying increases in stream diversions and sediment inputs, has overlapped, for the last four years, with our historically unprecedented severe drought. The result has been the loss of critically important year-classes of coho salmon and steelhead in streams in the Eel River watershed that have been the focus of fisheries restoration efforts

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for decades, a dramatic setback for the hope of coho recovery not just in the Eel but across the region.

New operations are being established as we speak, and expansion of existing operations continues apace, with no real hint of interest from local government in addressing hundreds of obvious violations of state and local laws, including Humboldt County's grading ordinance. Despite the overwhelming evidence that the booming marijuana industry, at least in its present form and current practices, has already overshot the carrying capacity of many North Coast watersheds, cannabis cultivators are pressing a proposal in Humboldt County that would allow cultivation by right of up to 10,000 square feet of cannabis canopy on every private parcel larger than five acres in the county, regardless of site conditions. It is thus vitally important that an effective system of regulation be established for this industry as soon as practicable.

The implementation and enforcement strategy for the waiver was not outlined in the draft waiver, but has been expounded by the Regional Board Chair during the public comment period. Mr. Corbett has declared his intention to issue "5000 licenses in the next year"[1] following the model of the practices employed by the Humboldt County Assessor's office to collect property taxes: identification of operations using aerial imagery; issuance of notice letters to the owners of record of identified parcels; and the issuance of fines and, where necessary, liens to secure compliance with the waiver's requirements that fees be paid, and that mitigation plans be prepared and followed, for every instance in which more than six marijuana plants are being grown across the region.

While it is impossible to know in advance how successful such an approach might prove in generating the budget Mr. Corbett hopes to secure "based upon the number of people that are enrolling,"[2] the history of efforts to regulate both water quality generally and the booming, black-market focused marijuana industry in the Emerald Triangle in particular, strongly suggest that voluntary compliance with such a program will be far less than complete, and not just because the Regional Board will be asking pot growers, who are after all subject to potentially serious sanctions for federal felonies, to do something quite a bit more complicated than simply paying property taxes. Piling up a stack of plans from those willing to cooperate will probably help improve water quality, but without resources and will sufficient to bring nearly every significant operation into compliance, there is no assurance that the program will actually protect water quality and beneficial uses that are now degraded, and being further harmed, by the industry's impacts.

However, when Mr. Corbett explains "(t)hat doesn't mean that we won't enforce against the few bad apples," he gives the game away: the Board's scant enforcement resources are not, in this perspective, a problem, because they will only be needed to deal with "the few bad apples," rather than with ensuring that the thousands of operations now causing significant individual and cumulative impacts to water quality and the beneficial

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[1] Personal communication.

[2] As quoted in the Willits News, http://www.willitsnews.com/general-news/20150605/regulatory-agencies-continue-to-move-forward-to-bring-growers-into-compliance

uses of our streams and rivers are effectively regulated. This picture is contradicted by the Board's own reporting on the industry's impacts. It is wishful thinking elevated to a strategy.

In fact, even if the draft waiver secures an entirely unprecedented level of voluntary cooperation from an industry that has evolved in open defiance of legal prohibitions and constraints for many decades, and only a few hundreds or thousands of operations (of the thirty thousand cultivation operations estimated in the region) remain outside the program, it would still take the Board decades to address the scofflaws with its existing enforcement resources. That fact alone strongly suggests that many cultivators will do the math themselves and choose to risk continue operating without the benefit of a permit from the Board.

The gross mismatch between the scale of the industry and its impacts and the Board's enforcement capacity means that the Board cannot assure the public that its program will actually be effective in protecting water quality and beneficial uses. Rather, the proposed waiver, for all its virtues, must be understood and analyzed as unenforceable in at least some degree, given existing resources. Because it is unenforceable, the mitigations assumed effective in reducing the admittedly significant impacts associated with the commercial cannabis industry today must be discounted. Thus, the use of a Mitigated Negative Declaration (MND) under the California Environmental Quality Act (CEQA) is clearly inappropriate, and a full Environmental Impact Report (EIR) must be prepared.

Even if, *arguendo*, we assume that the Board's waiver would accomplish the impossible, by securing full, immediate, and heartfelt compliance from every party to whom a notice letter is directed, an EIR would still be required, because the draft waiver does not show that existing, and rapidly growing, cumulative effects will be effectively addressed by the proposed mitigations. It cannot, because the draft waiver does not fully characterize those impacts, nor the dramatic rate at which they are increasing. Because the number of operations is so large and the enforcement team so small, the Board will not even have the capacity to closely review thousands of filings to ensure their adequacy as documents, much less oversee their implementation to insure that water quality is actually being protected. If the Board means to issue thousands of permits in the near future, it is impossible to avoid the conclusion that at least some of those permits will be issued to operations that are now harming, and will continue to impair, water quality to the detriment of beneficial uses, and particularly to the increasingly threatened coho salmon and steelhead of the Eel River watershed.

Of course, some compliance is certain under any reasonable system, because there are many cannabis farmers pressing for a scheme that will allow them to operate as legitimate businesses, to follow all environmental laws, and to protect our watersheds and other natural resources. That's a big part of why it is important to get the large parts of this effort as right as possible – it is the low-impact, conscientious, sustainable farmers who are most likely to cooperate, and most likely to suffer economic harm from a system that allows large-scale, high-impact operations to continue – whether under legal permit or otherwise. If a system only regulates the lower-impact operators, the watershed will still be

suffering many of the impacts that drove the creation of the proposed waiver in the first place, and the board will have failed to protect water quality.

What is uncertain, in the extreme, is the likely extent and effectiveness of compliance with the proposed waiver. It is essential that policy makers and the public are informed of the impacts associated with the industry, the rate at which those impacts are increasing, and the implications for beneficial uses, particularly for ESA-listed fisheries. This information is critical if we are to understand how those impacts are likely to be reduced under varying levels of successful implementation of the proposed waiver's substantive requirements. Both questions must be addressed in an EIR in order to assess what additional measures, including increased enforcement resources, are likely to prove necessary to protect water quality in our already-degraded streams and rivers.

Given the parlous state of coho and steelhead in the Eel River, at least some of the impacts associated with cannabis cultivation should now certainly be considered "take" of listed species, and the current operations of the cannabis industry as jeopardizing the survival and recovery of these runs. Such impacts would include dewatering, which has led to the loss of coho from China Creek, and threatens to extinguish the runs in Redwood and Sprowel Creeks. Coho are very unlikely to recover in the South Fork Eel River without substantial recovery of populations in Sprowel and Redwood Creeks, so the loss of those runs is a blow to the potential recovery of coho across the region extending from the Eel to Oregon's Rogue River. Similarly, sediment impacts associated with marijuana cultivation are clearly imparing reproduction and juvenile feeding in areas where fish are hanging on. Because its implementation and mitigations are so uncertain, the Board cannot show that the proposed waiver will prevent jeopardy or even mere take of these species, let alone that such impacts would be reduced below the level of significance. Thus, a Mitigated Negative Declaration is wholly inappropriate, and an EIR must be prepared.

Even before 2000, anthropogenic sediment sources were approximately equal in magnitude to natural sediment sources in the South Fork Eel. As Regional Board staff appreciate, the Eel has among the very highest levels of natural sediment sources for North American rivers, so that's a lot of additional sediment. But it is clear that since 2000, substantial additional roadbuilding, site clearing, and increases in the intensity of use have taken place across many areas of the North Coast, including areas with steep slopes and unstable soils and landforms. It is thus much more likely than not that anthropogenic sediment inputs are now significantly higher in many watersheds than they were in the 1990s.

It is important to be clear that despite the growing conversation about legalizing recreational use and sales of marijuana in California, the black market remains at the heart of the North Coast's pot industry. The industry exists here primarily because of prohibition; it responds poorly, if at all, to civil authority in large measure because of the risks of criminal prosecution; and those risks themselves engender the substantial financial incentives which drive the continuing boom in cultivation across the region.

Because the industry is likely to continue its rapid growth and evolution absent effective intervention, the draft waiver's provision of a five-year sunset period seems quite

sensible. Regulatory systems will need to be redesigned as the industry responds to pending legalization and other changes in the legal and political landscape. A related point is that, given that significant changes in the overall legal status of marijuana and the market for the plant and its products are likely to occur in the next five years, there is little logic to creating systems to manage marijuana cultivation on unsustainable sites. This is particularly true for large-scale operations; legalization will make agricultural land available where those operations are seen as desirable.

FOER strongly opposes any suggestion that the 2000 square foot limit in Tier 1 be raised. An operation of that scale can produce 100 pounds of finished product in a season, worth roughly $100,000 at today's prices. Allowing operations five times that size, as some have suggested, would create powerful incentives to develop many sites that may not be suitable or sustainable.

The three-tiered structure outlined in the Draft Waiver offers important opportunities to drive cleanup and recovery across watersheds. Counties and/or the state could incorporate these categories, as established and evaluated by the Regional Board, into their frameworks for permitting commercial marijuana cultivation. We would suggest that permits be issued for commercial cultivation – ie, operations larger than 2000 square feet – only in watersheds where all Tier 2 and Tier 3 sites have been effectively addressed to the satisfaction of Regional Board staff and other interested agencies. Third party entities probably have the best chance to effectively coordinate between individual parcel owners. If focused efforts were made to immediately address these problems, we could well see dramatic improvements in watershed conditions in the relatively near term.

Once all Tier 2 and 3 sites are addressed and water quality goals met, it may make sense to look to the possibility of expanding the existing industry on existing or additional sites on truly sustainable templates. However, until we reach that goal, further expansion of the industry should be discouraged with all available policy tools.

Unfortunately, it is likely that the majority of existing operations significantly larger than 2000 square feet are Tier 3. We frankly wish the Regional Board would – or maybe the word here is could – shut all such damaging, large-scale operations down in this fourth year of our ongoing drought. The fact that we're not considering such an option, that there's no agency in the state that appears capable of actually enforcing such a decision, says a lot about the fundamental mismatch between the scale of the challenges on the ground and in the creeks, as against the political will and resources needed to address those challenges.

Where the harms are likely to be greatest, and cooperation least forthcoming, in Tier 3 sites over 2000 sq ft in size, and where there is evidence of wilful violations, the Regional Board and all other agencies should make it an overriding priority to identify and close those operations. Failure to respond to this order, or deceptive responses, should be taken as evidence of wilful violation of this order and other applicable laws. To allow such operations to continue under any color of official sanction is to reward scofflaws and those abusing our watersheds with an unearned competitive advantage over people who are not only playing by the rules and protecting our streams and fish, but risking losses and incurring costs by complying with regulations.

Similarly, we would advise that parcels with operations significantly above 2000 ft be considered ineligible for T1 status for at least two years as a disincentive to increase the size of established operations. While we understand the Board's desire to adopt a cooperative, non-confrontational approach to working with willing landowners, given the scale of the industry and its history of non-cooperation, we strongly encourage the Board to carefully consider ways to increase the persuasive effect of its proposed regulatory structure. Consider, for example, assessing penalties on 3rd contact (ie, first contact is informational, second is warning, third is fine) as a general rule, with escalating schedule of fines to encourage rapid compliance.

To protect water quality, a regulatory framework for marijuana cultivation must ban the use of water trucks to supply pot farms. Water trucking should be allowed only for critical domestic uses. Given their impact on water quality through both illegal, unpermitted diversions and sediment delivery from very heavy trucks traversing roads not engineered for those loads, the use of water trucks by any marijuana cultivation operation should constitute a violation of the standard conditions and should result in both the operator and the property being ineligible for a permit for at least several years.

Finally, If the Board is going to protect water quality in these areas, it must address high-impact roads, including both chronic sediment sources and those which present risk of catastrophic failure. A comprehensive framework should not only assess road conditions, surface maintenance, and crossings, but also road location. Streamside and midslope roads are subject to higher failure rates and cause significantly greater harm to watersheds that ridgetop routes. Similarly, roads constructed on unstable landforms are often major sources of sediment that can be redirected to provide access at much lower impact. The private landscape the draft waiver seeks to regulate here is often networked with road systems adapted from logging roads first established in the second half of the twentieth century, but often many decades ago. On industrial timberlands, much of that older road system has been the rightful focus on decades of work to relocate roads, upgrade and armor stream crossings, and ensure that roads are designed and maintained to meet the needs for which they are created. We are long overdue for a similarly systematic effort to address road systems across the private landscape. Of course, such an effort will have significant benefits for public safety and transportation as well as stream health.

Thank you for your consideration of these comments.

Sincerely yours,

/s/
Robert Scott Greacen
Executive Director
Friends of the Eel River

Fresno Cannabis Association

Support and advocacy for Fresno County and the Central Valley

June 8, 2015

To: North Coast Regional Water Quality Control Board members and staff

From: Michael S. Green, president
Fresno Cannabis Association

Re: Adoption of General Waiver of Waste Discharge Requirements and a General Water Quality Certification for Discharges of Waste from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region.

The Fresno Cannabis Association is an unincorporated association representing medical cannabis patients and collectives in Fresno County and its incorporated cities. The following comments are submitted in opposition to the adoption of the draft waiver in its current form. While cannabis cultivation can and does have site-specific environmental impacts, the proposed regulations are overbroad and would primarily be enforced in conjunction with state and local law enforcement.

Because of the sheer scale and complexity of the issues involved, we urge a statewide review of cannabis cultivation practices and related environmental and enforcement issues, rather than a unilateral action by the North Coast water board that could have direct and indirect consequences that are unforeseen. Among other concerns, the proposed action could set precedents affecting cannabis cultivators under the authority of the Central Valley Regional Water Quality Control Board, including those residing in Fresno County and the San Joaquin Valley.

The following comments are in response to specific elements of the draft waiver.

Overview

1. The proposed findings are based on anecdotal evidence, at best, and sheer speculation at worst. This can and does cast cannabis cultivation in such a negative light such that it can be distinguished from other forms of agricultural activity occurring within the same watersheds. Examples: "The North Coast Region is *inundated* with marijuana cultivation in headwaters and main river systems, with active, developed sites in steep and rugged terrain"; "land area under cultivation increasing *exponentially* over the past decade." (emphasis added). We do not question the fact that cannabis cultivation has grown incrementally in past years, both in the North Coast region and in other areas of the state. However, no baseline data is provided that would support such expansive findings. We also note the Initial Study lacks any quantifiable baseline data regarding the number and location of current cultivation sites.

2. The proposed regulations do not apply to operations or grows of no more than 12 immature or 6 mature plants and where there is no potential for discharge of waste. While this is, perhaps, reflective of existing state law regarding personal cultivation by qualified patients, no substantial evidence is provided that per-parcel exemptions for the threshold number of plants would not result in potential site-specific discharges, nor that the cultivation of small numbers of plants could not have cumulatively considerable impacts when viewed in the aggregate in a region that is "inundated" with grow sites.

Anecdotally, a wide range of existing cultivation practices has been observed within the North Region and the Central Valley, including families and friends with two or more patients living on the same parcel and larger collectives or collective-supplying growers. We don't object to provision for personal cultivation that will not require a discharge waiver, but a more flexible exemption should allowed for personal cultivation in multi-grower households. The exemption should be based on a rational baseline analysis that takes into account the full scope of existing personal and commercial cultivation practices.

3. The sheer scope of the proposed regulations is troubling, especially as it applies to non-cultivating landowners who could be subject to sanction for violations caused by their tenants. (Vallco Park, State Water Board WQO 86-18.) We have seen ample evidence of this principle in action in Fresno County, where landowners are often fined tens or hundreds of thousands of dollars for violations of the county's cultivation ban, regardless of whether they actually caused or contributed to the violation. A summary of these actions can be viewed at http://fresnocannabis.org/fresno-county/cannabis-fine-appeals/.

Because landowners represent the "deep pockets" in any enforcement action, and because of the Vallco Park decision cited above, it is reasonable to assume that property owners will face the lion's share of legal exposure when unwitting or unscrupulous tenants fail to pay penalties for discharge violations. It is also reasonable to assume that many of the problems observed within the North Coast region arise from tenant growers rather than landowners. The proposed penalties may seek to stem illicit discharges, but they very likely will miss the actual target when applied to non-resident landowners. Because no baseline analysis has been conducted, we don't know how many land parcels are affected by the proposed regulations, nor the mix between rental properties and owner-occupied properties.

4. The draft waiver covers a large number of activities attributed to marijuana cultivation, but the exact same activities apparently do not require a waiver when medical marijuana is not involved. No legal or environmental justification is provided for this disparate treatment, raising due-process concerns.

More measured and site-specific approaches have been taken in the North Coast region, including proposed regulations for Easter lily bulb cultivation in the Smith River Plain.

http://www.waterboards.ca.gov/northcoast/water_issues/programs/agricultural_lands/pdf/150330/150330_WaterBoard_SmithRPlainMonitoringFactSheet.pdf

Discharges of of waste associated with vineyards and orchards in the North Coast Region are covered by General WDRs and/or General Conditional Waiver of WDRs.

http://www.waterboards.ca.gov/northcoast/water_issues/programs/agricultural_lands/

Discharges of waste associated with grazing activities in the State of California are being developed on a statewide basis, not a regional one. The Grazing Regulatory Action Project "aims to facilitate efficiency and statewide consistency in developing and implementing strategies to meet its goal, while at the same time accounting for regional differences in hydrology, topography, climate and land use."

http://www.waterboards.ca.gov/water_issues/programs/nps/grap.shtml

The pertinent question that arises is this: Why is the North Coast water board considering regional regulations, rather than general waivers, site-specific regulations or regulations that apply statewide? Our association supports the latter approach as being the most likely to result in consistent regulations.

5. The draft waiver claims "Most of the potential water quality impacts from the listed activities are associated with erosion and sediment delivery and/or changes to riparian systems that may reduce shade and affect water temperatures, over allocation of water sources, and chemical/pollutant discharges from areas under cultivation or material/waste storage areas." This generalized statement is not accompanied by any baseline analysis of general and site-specific cultivation activities, nor is any effort made to distinguish such impacts from those already covered by general agricultural waivers. This begs the question of why regional, cannabis-specific regulations are needed vs. potentially less intrusive forms of regulation that could be applied on a site-specific and/or statewide basis.

8. The proposed order "does not authorize discharges of waste associated with any new development of sites for marijuana cultivation or related activities." The meaning of this statement is unclear, and could be construed as a moratorium of sorts for new cannabis cultivation sites within the North Coast region. Because no baseline study has been provided, there is no inventory of existing cultivation sites that can be used to determine whether "new development" is occurring, nor is any statutory authority cited that would allow the water board to bar such development.

Additional clarification is required to distinguish "construction" activities from cultivation activities. The draft order should clearly distinguish between large-scale activities greater than one acre in size, and those more closely and typically associated with cannabis cultivation and other agricultural activities, by providing an explicit exemption for "Disturbances to land surfaces solely related to agricultural operations such as disking, harrowing, terracing and leveling, and soil preparation." Requiring cannabis farmers to obtain construction permits by default is expensive and overbroad.

15. The proposed order purports to "address sediment and temperature impairments" without the benefit of any baseline data or monitoring program that shows the number, frequency and severity of such impairments that may be attributed directly to medical cannabis cultivation. This is not to say that such impairments have not been observed anecdotally on a site-specific basis, but without more substantial evidence the proposed order is a solution in search of a problem that may not be as serious or as widespread as claimed.

16. The proposed order claims, "It is evident that the over-diversion of surface water for marijuana cultivation continues to impact instream beneficial uses." Such claim is not self-evident, however. Nor is it self-evident that water diversion is a problem unique to marijuana cultivation; arguably, the very same problem exists for general agriculture activities that are already covered by general waivers. A special discharge waiver for cannabis cultivators is not required to gather information on water rights.

17. A three-tiered approach is proposed for the waiver program, based on criteria including defined cultivation areas, slope and proximity to surface water. No evidence is provided to support the distinctions between tiers, nor their purported environmental benefits of such arbitrary classifications. No baseline inventory of land parcels within the region is provided to determine tier classifications; hence, the assumption is that such determinations will be made on a site-specific, case-by-case basis.

Tier I "dischargers" are barred from using surface water from May 15 through October 31, regardless of their rights to such surface water. They also are subject to "self-certification" and administrative penalties for violations. If we are to believe that Tier I growers pose minimal risk, as claimed, then the proposed certifications, fees and penalties are an overbroad application of the water board's authority. Tier I dischargers can further be bumped to Tier 2 for alleged failure to meet "standard conditions."

Tier 2 dischargers face an additional requirement to prepare a water resource protection plan. Agricultural dischargers on parcels with the same characteristics face no such requirement. Absent any showing or substantial evidence that marijuana cultivation is more likely to impact water quality than similar agricultural activities on similar land parcels, cannabis cultivators will be denied equal protection under the law by the arbitrary and capricious application of the proposed order.

Tier 3 dischargers must develop and implement a cleanup and restoration plan, based on vague and overbroad criteria that include "current or past land development/management activities that have resulted in a discharge or threatened discharge in violation of water quality standards." Since no baseline study of cannabis-specific land development and management has been conducted for the 19,000-plus square miles of land parcels covered by the proposed order, one is left to wonder exactly how past cultivation activities and "threatened" discharges will be gauged, and by whom. Although not stated explicitly in the proposed order, it is reasonable to assume that state and local law enforcement agencies will take the lead on providing surveillance and other intelligence on "historical" grow sites, including nuisance grow sites most commonly associated with water quality violations. Additional authority to apply tiering to individual parcels is granted to unspecified "certified third parties."

19. A good indicator of how confusing the proposed waiver system is can be found here: "Plans can range from a simple description of the management practices to be implemented, to comprehensive descriptions of existing sources of waste discharge and elevated water temperatures, management practices employed to control the sources, and a monitoring and reporting program to document actions taken to control the sources and the effectiveness of such actions."

In other words, you can be a Tier 1 unless conditions exist to make you a Tier 2 or Tier 3, as determined by the field inspector or third-party inspector, and the required management and/or cleanup plans can be as simple or as complex as those same investigators deem appropriate. By any measure, this fails to give cannabis cultivators, landowners and the public at large any reasonable ability to determine the impact of the proposed regulations on their individual properties before the regulations are enacted. Due diligence and a sense of fair play would suggest more time for stakeholder input is needed.

20. The same caveat can and should be applied to the imposition of Best Management Practices. The nexus between the desired benefits of the proposed order and the optional/mandatory BMPs is not established by any baseline analysis that would support their applicability to cannabis cultivation, or their utility in mitigating the impacts of such cultivation. The same BMPs are not necessarily required to be followed by other agricultural dischargers within the same region, raising legitimate questions of equal treatment of law.

21. The proposed order envisions the use of third-party certification companies with rather expansive powers, including tracking of names, collection of fees and development and implementation of water quality monitoring programs. This necessarily involves, at a minimum, determination of qualified patient status under Proposition 215. Whether by the water board or third parties, the medical privacy rights of cultivation patients must be respected, and the board's data-collection authority is ill-defined.

22. Although the proposed order envisions "coordination and cooperation" with cultivators, the reality is that the water board and its staff will coordinate with state and local law enforcement agencies to identify nuisance grow sites and prioritize enforcement actions. An unannounced enforcement action along the Eel River watershed utilized this approach.

http://www.swrcb.ca.gov/press_room/press_releases/2015/pr012215_sproul_creek.pdf

http://www.swrcb.ca.gov/water_issues/programs/enforcement/docs/a_big_stick.pdf

http://www.pressdemocrat.com/news/3451589-181/state-seeks-water-rules-for

Such "compliance checks" are purported to be voluntary, but the frequent use of property inspection warrants is also clearly envisioned in cases where growers decline to "volunteer" to be inspected. Therefore, while the overall theme of the proposed regulations are administrative in nature, in practice they will be applied using a mix of civil and/or criminal enforcement. The ability of the water board to enforce its own regulations without relying heavily on law enforcement data and staff support is highly questionable given the extensive commingling of state-compliant and illicit cultivation in the region.

34. The proposed inspection fees are onerous and excessive, bearing little to no relation to the actual cost of providing inspection services,whether by the agency or third parties. These minimum costs will be further increased by unspecified but likely substantial costs for mandatory reporting and monitoring programs. As such, the fees will undermine and defeat any and all attempts at "self-certification" and "voluntary compliance."

The inspection fees are documented here:
http://www.oal.ca.gov/res/docs/pdf/emergencies/recent%20action,%20moved%20emergencies/2014-1017-01EFP.pdf

$500 - Less than 1/4 acre
$2,500 - 1/4 acre to 5 acres.
$10,000 - Greater than 5 acres.

36. The Regional Water Board's proposed additional findings are not supported by substantial evidence. There is no evidence that new discharges will not occur under the proposed order, especially when a concurrent Board finding is that cannabis cultivation - both state-compliant and illicit - is rampant. Further, there is no evidence that the Board or staff has considered the indirect consequences of the proposed order, including substantially increased indoor cultivation activities within the Basin and/or the displacement of existing outdoor cultivation activities to adjoining water basins and regions. This latter concern is especially critical given the large geographical footprint of the proposed regulations, and the observance of similar water-quality issues in regions where the proposed rules will not apply.

37. Adoption of a Mitigated Negative Declaration (MND) is not appropriate where substantial evidence exists of potentially significant environmental impacts and/or where the Board's findings are not supported by substantial evidence. Despite the good intentions that have given rise to the proposed regulations, due diligence requires additional study and the preparation of an Environmental Impact Report, which will more fully study project alternatives and their potential impacts. Additional comments regarding the Initial Study and its proposed MND will be provided in a separate letter.

We very much appreciate the leadership of the Board and its staff on this important issue. However, more work is needed to ensure the proposed rules will be evenly and fairly applied in a manner that yields positive and consistent results. That scope of work includes additional environmental review.

Thank you for your consideration of these comments.

Sincerely,

Michael S. Green, president
Fresno Cannabis Association

Fresno Cannabis Association

Support and advocacy for Fresno County and the Central Valley

June 8, 2015

To: North Coast Regional Water Quality Control Board members and staff

From: Michael S. Green, president
Fresno Cannabis Association

Re: Initial Study -- Adoption of General Waiver of Waste Discharge Requirements and a General Water Quality Certification for Discharges of Waste from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region.

The Fresno Cannabis Association is an unincorporated association representing medical cannabis patients and collectives in Fresno County and its incorporated cities. The following comments are submitted regarding the Initial Study and in opposition to the proposed Mitigated Negative Declaration.

Because of the sheer scope of the proposed regulations, and the lack of substantial evidence submitted in support of the proposed Mitigated Negative Declaration, we request the North Coast board to delay or forgo the recommended actions and to instead initiate a study of the proposed regulations as they would apply statewide. Such action would be consistent with the statewide approach to grazing rules.

Should the North Coast water board wish to pursue these regulations on a regional basis, there is substantial evidence in the available record that the proposed regulations will have a substantial impact on the environment and/or that they will have cumulatively considerable environmental impacts, both within the North Coast region and in other regions where displaced cultivation activities may occur. Among other concerns is whether the proposed rules will substantially increase indoor cultivation within the Basin by otherwise state-compliant growers wishing to avoid application of the new rules. Such a wholesale shift in cultivation patterns can and will create environmental impacts of their own.

Where there is substantial evidence supporting a "fair argument" of potential environmental impacts, the agency is required by statute and California case law to prepare an Environmental Impact Report. We therefore respectfully request the Regional Water Board to authorize preparation of an EIR.

AGRICULTURAL AND FORESTRY RESOURCES

The Initial Study claims that "The Order does not convert farmland to non-agricultural uses, result in the loss of forest land or conversion of forest land to non-forest use, or involve other changes in the existing environment which, due to their location or nature, could result in conversion of farmland, to non-agricultural use or conversion of forest land to non-forest use."

The Initial Study does not consider the possibility that the sheer scope and breadth of the proposed regulations may prompt some growers to relocate to forest lands that fall outside of the Water Board's regulatory authority.

Although cannabis cultivation on public lands is illegal in virtually all cases, the Initial Study must consider the previously documented existence of widespread cultivation on public lands, as well as the likelihood that increased enforcement on private lands within the Basin could exacerbate that problem. The North Coast basin encompasses large swaths of National Forest land, including some or all of the Six Rivers, Shasta-Trinity, Mendocino and Klamath national forests.

No baseline study or other substantial evidence has been provided regarding the number and location of land parcels where cannabis cultivation is occurring, whether by state-compliant or illicit growers. Thus, the finding of "less than significant" impact on forest land is speculative and conclusory.

AIR QUALITY

No analysis on the possible air quality impacts of the proposed regulations has been performed, and there is no evidence any attempt was even made to identify whether any such impacts could exist.

Outdoor cultivation remains the safest and most affordable means of cultivation available, as well as the one with the smallest carbon footprint. It is reasonable to assume that enforcement of the Regional Water Board's regulations will mainly target outdoor sites, since cultivation at indoor locations is much more difficult to discover and investigate. Indeed, the proposed rules fail to address indoor cultivation at all, even though such cultivation can result in discharges to waste and stormwater systems.

Cannabis cultivation, both legal and illegal, has been endemic in the Basin for decades. The direct and foreseeable result of the proposed rules is not a reduction in the total number of cannabis plants grown within the Basin, but rather a shift of existing outdoor cultivation sites to indoor locations. Because no baseline analysis has been provided regarding the number of outdoor cultivation sites affected by the proposed rules, the full scope of the potential shift is unknown. However, the Board findings state that cannabis cultivation has grown dramatically, even "exponentially," so the impact is likely significant.

A 2011 study of energy consumption related to indoor cannabis cultivation was compiled by Evan Mills, an energy analyst and staff scientist at the Lawrence Berkeley National Laboratory. “In California, the top producing state (of marijuana), indoor cultivation is responsible for about 3% of all electricity use or 8% of household use .... This corresponds to the electricity use of 1 million average California homes, greenhouse-gas emissions equal to those from 1 million average cars, and energy expenditures of $3 billion per year.” The full report is at http://evan-mills.com/energy-associates/Indoor.html.

As further described in the Mills report, energy uses commonly associated with indoor cannabis cultivation include “high-intensity lighting, dehumidification to remove water vapor and avoid mold formation, space heating or cooling during non-illuminated periods and drying, pre-heating of irrigation water, generation of carbon dioxide by burning fossil fuel, and ventilation and air-conditioning to remove waste heat. Substantial energy inefficiencies arise from air cleaning, noise and odor

suppression, and inefficient electric generators used to avoid conspicuous utility bills. So-called ‘‘grow houses’’ – residential buildings converted for Cannabis production – can contain 50,000 to 100,000 W of installed lighting power (Brady, 2004). Much larger facilities are also used.” Increased power generation to meet the demand created by indoor growers releases more air pollutants, including ozone precursor chemicals.

Beyond the possible impacts of increased indoor cultivation, the Initial Study fails to consider the possible air quality impacts of its own increased enforcement efforts. These could include vehicle-miles traveled by Regional Water Board staff, third-party inspectors and/or law enforcement task forces seeking to conduct compliance checks on thousands of land parcels within the Basin. To the extent that the Water Board seeks to conduct surveillance and/or enforcement using helicopters and aircraft, those vehicle-miles can and will create pollutants and greenhouse gases affecting the general environment.

Further, added vehicle trips on dirt roads in rural areas, and/or the frequent use of helicopters during low-level surveillance and/or landings and take-offs at inspections and cleanup operations, can substantially increase suspended particulate matter (PM10) within localized areas. The entire North Coast Air Basin is currently designated as nonattainment for the State 24-hour PM10 standard.

http://www.ncuaqmd.org/index.php?page=northcoast.airbasin

The Initial Study fails to consider or address whether the proposed regulations would result in a cumulatively considerable net increase in a criteria pollutant for which the region is in non-attainment under federal and/or state ambient air quality standards, namely, suspended particulate matter (PM10).

GREENHOUSE GAS GENERATION

No analysis on the possible impacts of the proposed regulations on greenhouse gas generation has been performed, and there is no evidence any attempt was made to identify whether such potential impacts.

There is substantial evidence in the record that the proposed regulations would result in a substantial increase in vehicle miles traveled by sheriff's deputies, county code enforcement officers, Water Board staff and/or third-party inspectors attempting to enforce the proposed regulations, and also to abate and/or clean up cultivation sites found in violation. There is substantial evidence that greenhouse gas generation also may be impacted by the thousands of qualified patients who are unable (or simply unwilling) to fully comply with the Regional Water Board's new regulations, and who will thereupon displace or alter their cultivation practices.

Among the reasonably foreseeable consequences of the new rules is a substantial increase in indoor cultivation, which requires an electrical supply and/or off-the-grid electrical generators powered by fossil fuels. This possibility is not considered in the Initial Study, although it does allow that some short-term generation of GHGs will occur during cleanup operations. Even so, no evidence supports the proposition that, "Even without temporally staggered remediation/cleanup/restoration activities, the impact of greenhouse gas emissions on a watershed-wide scale will be less than significant." The massive geographical scope of the proposed regulations (watershed-wide) and the wide range of activities covered provide ample evidence that GHG generation is not only possible, but likely.

HAZARDS AND HAZARDOUS MATERIALS

The Initial Study acknowledges hazardous materials including petroleum-based products, pesticides and other chemicals (including herbicides and plant fertilizers). Interestingly, the study focuses entirely on the issue as it pertains to outdoor cultivation. How those same materials might well be present at indoor cultivation sites is not addressed, nor is the issue of potential discharges of hazardous materials to waste and stormwater systems.

A broader view is required here, especially as it applies to potential discharges of hazardous materials to groundwater and municipal water systems. While the most serious and visible problems may involve large-scale outdoor cultivation operations (as defined in the Water Board's own tiering structure), the proposed regulations fail to consider the possible impacts of all cultivation practices, including indoor. The proposed mitigation measures are half-measures at best; at worst, the emphasis on enforcement against outdoor grows could potentially increase indoor discharges. The finding that the proposed regs would have a "less than significant" impact is unsupported by the evidence cited on this topic.

LAND USE AND PLANNING

The Intial Study does not survey or analyze local zoning ordinances pertaining to cannabis cultivation, even though the proposed regs would apply across 19,000-plus square miles. The North Coast is home to a wide variety of regulatory approaches by local governments that address both personal and collective cultivation activities. It is not acceptable to claim that the proposed regulations do not affect land use activities, because the face of the regulations themselves show that they very clearly do. These activities can include grading, storage of hazardous materials, code enforcement and farming activities protected by "right-to-farm" ordinances. The finding of "no impact" is simply not supported.

UTILITIES AND SERVICE SYSTEMS

The Intial Study makes a "no impact" claim regarding impacts on wastewater treatment, even though "Many of the sites that would be subject to this Order currently have onsite wastewater treatment facilities that are in need of maintenance, and many lack a system entirely." The effects of indoor cultivation on wastewater treatment systems have not been analyzed, nor have the potential impacts of substantially increased indoor cultivation that could result from the enforcement of the Water Board's rules to outdoor gardens.

Many of the same hazardous chemicals noted above can be used for indoor cultivation operations. Where this occurs in areas served by municipal stormwater and wastewater systems, those discharges can and do impact utilities and wastewater treatment systems. Provision for sustainable outdoor cultivation practices may be viewed as a mitigation measure that would lessen the impact of widespread indoor cultivation; however, that possibility was not considered in the Initial Study. Regardless, the "no impact" claim is unsupported by substantial evidence.

Further, the proposed order purports to cover waste plant materials generated during cultivation. This "could cause an increased influx of materials going to local transfer stations and thence to (mostly) out of Region landfills in the short term, but is not expected to occur on a scale that would impact the capacity of landfills accepting waste." This finding runs opposite to the study's claims that marijuana cultivation is increasing by leaps and bounds; if so, the amount of waste is substantial and growing.

MANDATORY FINDINGS OF SIGNIFICANCE

The Initial Study relies on the adoption of mandatory Best Management Practices to mitigate any cumulatively considerable impacts. However, as noted above, the proposed rules focus solely on outdoor cultivation activities and their potential impacts, as do the BMPs. Indoor cultivation is not addressed in any substantive way, and the likelihood that indoor cultivation will increase substantially when the proposed rules are applied to outdoor gardens is not even considered as a remote possibility.

Put simply, there is no substantial evidence in the Initial Study that the proposed regulations will not have cumulatively considerable impacts upon medical cannabis patients and primary caregivers who cultivate medical cannabis within the Basin, nor that the proposed action will not cause substantial adverse effects on human beings living in the general environment.

Rather, there is substantial evidence in the record that both indoor and outdoor cultivation is common within the Basin, that both types of cultivation can and do have unique carbon footprints and other potential environmental impacts, and that the proposed regulations failed to consider or address whether increased enforcement regarding outdoor cultivation would exacerbate equal or greater problems attributed to indoor cultivation.

Thank you for your consideration of these comments.

Michael S. Green, president
Fresno Cannabis Association

From: **Robert Sutherland** woods@asis.com
Subject: Order No. 2015-0023: comments
Date: June 8, 2015 at 11:02 AM
To: Jay Biancalana support@asis.com

RS

Jay: letter for sending. Thanks. let me know if it goes through.
To: northcoast@waterboards.ca.gov
Subject: Order No. 2015-0023: comments

Northcoast Regional Water Quality Control Board
Colleagues:

Here are **comments on Draft Order No. 2015-0023**. These are the comments of the Humboldt-Mendocino Marijuana Advocacy Project (HUMMAP) and Robert Sutherland. These comments are for the permanent record. We request a full written response to our comments.

1) We object to your standard in finding 3 regarding legacy impacts:

"Landowners are responsible for discharges of waste and water resource impacts both from recent site development and activities underway, as well as discharges of waste from past or legacy development/features[3] on the properties that they own."

Legacy impacts generally means the enormous damage caused by laissez-faire logging. Such damage was not a violation of law. That prior damage is not the liability of the subsequent purchasers, and you may not retroactively hold them liable for it. See California Constitution Article 1 Section 9. Such impacts either might be ignored or corrected by government action, but the landowner cannot be compelled to correct them.

2) We object to the scope of your order:

"This Order does not apply to operations or grows of no more than 12 immature or 6 mature plants and where there is no potential for discharge of waste."

This qualification to the Order implies a view of the reasonable limits that a medical marijuana patient needs. That view is far from cognizant of present awareness and practice. Presently for example, medically most sought-after is cbd oil, which is non-psychoactive. In fact it is wildly sought because of its efficacy with pediatric seizures. To obtain sufficient supplies of this juice patients or their care-givers commonly grow fifty plants at a time. You do not have the legal authority to insert yourselves between the patient and the doctor. See People v. Kelly (2010) 47 Cal.4th 1008. You may not impose conditions on a patient or caregiver in derogation of the defenses established in Proposition 215. See California Constitution Article 3 Section 3.5. You do not need to use numbers. We request that the wording of your exemption cited above be changed to reflect medically appropriate grows irrespective of size, where there is no significant potential

for discharge of waste.

This inappropriate restriction also will force growing indoors, where the adverse environmental impacts are recognized to be much more significant. Accordingly, we object to your intention to file a mitigated negative declaration pursuant to CEQA. We request a full written analysis of all impacts of the proposed regulations that tend to promote growing indoors in lieu of outdoors, which clearly will be cumulatively severe, as well as controversial. Your proposal violates CEQA. We are damaged if this proposal is maintained. Please timely provide us a full written response to our objections.

3) We have seen that water regulation on the ground can be done well - or poorly. When a permit connects to a chain of actions scarcely related to the primary focus, the regulator is stepping beyond his or her mandate. This amounts to social genocide. There is a background to why this strong terminology is appropriate. When the back-to-the-land folks occupied this highly trashed countryside post unregulated logging, the Counties did all they could to block them from moving in and wrongfully made it impossible for them to get permits and legal parcels. Citizens successfully resisted the government moves. When water regulators blunder into requiring code compliance, Fire-Safe roads, and expensive monitoring equipment they reignite conflict that is the responsibility of government to rectify. We are hopeful that your effort at highly desirable regulation will not stumble over these scarcely latent issues, for we sincerely want your effort to succeed. You need to clarify explicitly the limits of your regulatory effort so as to curtail administrative misadventure. We request you revise the draft to specify the regulation of waste discharge arising directly from commercial marijuana farming as your sole venture.

4) We want to add our voice to the broad chorus of complaints that you continue to manifest corruption in avoiding enforcement against egregious water abusers that are politically well connected. We request equal protection under the law.

5) Finally I want to comment on the sense of welcome that I feel towards your regulatory effort. For many years I and my fellow members of HUMMAP have sought reasonable environmental regulation of the marijuana industry, but both the legislature and the federal government have sat on their hands or worse. I think your effort will be the first to achieve some effectiveness. Thank you! With such a complex and changeable industry, we do not expect that any regulatory scheme will be all-encompassing, and thus we request that you expect change and provide readily for it. We also request you seek and accept advice from others. Marijuana will be a major California industry for all time, and the Emerald Triangle will remain its center. With this you have a lot of responsibility, and getting it right now will be enormously beneficial to all. Many people are commenting on these regulations. Please consider all the comments with care and wisdom.

Robert Sutherland, for HUMMAP
PO Box 996, Redway CA 95560
woods@asis.com
7 June 2015

June 8, 2015

Matthias St. John, Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A,
Santa Rosa, CA 95403

RE: Comment Letter for Draft Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region

Dear Matt,

Russian Riverkeeper ("RRK") is one of twelve Waterkeeper organizations within the California Coastkeeper Alliance ("CCKA") network. RRK works tirelessly to protect and enhance the 1484 square mile Russian River Watershed for the benefit of its inhabitants, its visitors and the ecosystems. On behalf of RRK, we appreciate the opportunity to provide comments on Order No. R1-2015-0023, Draft Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region.

RRK appreciates the time and effort that Staff has spent on the development of this Waiver. One of our biggest concerns is where Tier Zero ends and Tier One begins. We follow the rationale that "site-specific conditions or features" such as those listed on page 20 Section C(7) may warrant inclusion into the Waiver (something not considered in the Draft Waiver as a basis for coverage) but we do have issue with seven "mature" plants being the baseline for coverage under Tier One enrollment. We believe this to be overly restrictive (and impossible to enforce given the current budget and limited staff constraints that Region One faces). We recommend Staff re-evaluate this and consider a baseline of something more practical than the size of an average tomato garden. Please consider Tier Zero ending at a level more reflective of where a growing operation goes from a small backyard, personal use grower and instead focus on the larger growers that are responsible for the majority of problem (i.e. the dividing line between medicinal and commercial sales).

Two areas we strongly oppose are (1) Program Framework - #17 Allowing cultivation on slopes over 20% and up to 35% is very risky as any loose soil on slopes over 20% will move to streams. We urge you to change the Tier 1 definition to slopes under 20% (not 35% as written) for total cultivation and support areas of less than 2000 square feet.
(2) on Page 14 Section A, Subsection 3(a) Riparian and Wetland Protection and Management "at a minimum, cultivation areas and associated facilities shall not be located or occur within 100 feet of any Class I or II watercourse or within 50 feet of any

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class Class III watercourse or wetlands". We believe that if you include Subsection 3(c) and 3(d) as part of the "Riparian and Wetland Protection and Management" Section than Subsection 3(a) is in in direct contradiction of both of these by allowing for such minimums. We strongly recommend you include that under no circumstance should any cultivation areas be within less than 200 feet of any Class I, II or III watercourse or wetlands and if they are that they should be moved into Tier 3 and should have the necessary "restoration of riparian corridor" component implemented in order to bring those growers back into compliance with the 200 foot minimum buffer spelled out in Tier One. Note: RRK believes that there is no scientific basis for reducing the buffer width for smaller streams and if your goal is to reduce sediment pollution it should be maintained at least 100 feet proscribed by USEPA for stream water quality protection from agriculture.

RRK is opposed to certain elements of the Draft Waiver 1) stock piles (instead of stating "manner so as to prevent their transport" {Page 13 A.1.f} we recommend that Staff includes a statement that stock piles should be covered in such a fashion asto avoid transport during precipitation events or wind events) Note: RRK believes that the simplest easiest BMP to prevent erosion of spoils piles is not listed - we urge you to mention covering spoils piles with plastic or tarps as it is something everyone understands and vague goals that make sense to water quality regulators can be lost on cannabis growers so spell it out if a simple solution can be applied. The current language might lead someone to just throw straw on a pile of loose dirt and not help reduce erosion effectively. A simple sentence such as the following can help make the solution easy to grasp for regulated parties and lead to compliance. "Practices such as adding covering to spoils piles with waterproof materials and surrounding the base of the piles with erosion wattles can help keep spoils from running off." and 2) runoff from irrigation and fertilizers at agronomic rates and application of chemicals (pesticide/rodenticide applications) according to label specifications assumes that there will be no runoff! Why then does the Waiver specify allowances for "Irrigation Runoff"{Page 15 A.6.}? Similar to Spoils management in I.A.4 we urge you to bring up covering piles with waterproof fabrics as a simple suggestion and not prescriptive solution otherwise you leave the door wide open for water quality issues.

RRK strongly supports the Compliance Enforcement Section on Page 8 and 9 particularly numbers 23-26. We also concur with your findings on page 11 and 12 with regards to "comprehensive activity tracking by mapping Tier 3 cleanup and restoration sites and individual stream crossings" replacements and the subsequent ability to "direct activity timing under this Order…to limit the number of individual potential construction-related impacts occurring at any given time in any given watershed".

Another area RRK supports is on Page 13 Section A, Subsection 1, (c,d, and e) and Page 15 Section A, the entire Subsection 5. We must mention that Subsection 5.(d) states that "Water is applied using agronomic rates". If this is the case, what is the rationale for Subsection 6. "Irrigation Runoff"? There should be no runoff if water is applied at an agronomic rate.

We strongly support the wording on Page 18, Section B. particularly in subsection 7 under “Water Use” where it states that the “Plan” shall record “amount used monthly”. We all need to be held accountable for our water use and RRK believes that this a much needed advancement and should be included in all future Region One waiver developments. RRK commends you for including on Page 23, Section IV, General Prohibitions, A., B., and C. We have witnessed firsthand the deleterious results that these practices have produced in the Russian River Watershed and applaud the inclusion of these prohibitions into the Waiver.

Appendix B - BMP's E: Water Use and Storage:
We urge you for the sake of water efficiency and pollution control to require zero net runoff from irrigation, it is not agronomic rate to apply a volume or rate of water that produces runoff. If your goal is to reduce water use then setting irrigation rates to mimic soil infiltration rates and soil water holding capacity can be done and will ensure the highest water efficiency. Any surface runoff from irrigation is obviously beyond the soils hydraulic capacity and will create a risk to water quality so we urge you to define agronomic rate as the rate that produces no run-off, it's easy to do with drip systems and timers that most growers use already.

The Russian Riverkeeper thanks you for the opportunity to comment on Order No. R1-2015-0023, Draft Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region and looks forward to working together with you in the future.

Sincerely,

Bob Legge

Bob Legge
Policy and Outreach Coordinator
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CITIZENS *for* RESPONSIBLE ACCESS

June 8, 2015

Citizens for Responsible Access (CRA)
16129 Main St., #B119
Guerneville, CA 95446

ATTN: North Coast Regional Water Quality Control Board
5550 Skylane Blvd. Suite A.,
Santa Rosa, CA 95403

RE: Cannabis Draft Order, 2015-0023

Dear Diana Henrioulle,

Citizens for Responsible Access (CRA) and its individual members possess a depth of knowledge that can be of great benefit towards creating a workable set of cannabis guidelines accepted by the community and effective in dealing with the issues. We are a cannabis advocacy group that is comprised of the largest cannabis organizations here in Sonoma County, whom also work state-wide to improve cannabis policy. We understand that a true solution works when all parties are involved, and are ready to work collaboratively with other participants to find resolution.

Here are some of our comments on your DRAFT Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effect in the North Coast Region:

1) Whatever policy you come up with must protect the anonymity of cultivators and their locations. Cannabis cultivation for medical purposes is legal in California, but illegal federally. There are ways that you can have people register without creating a centralized database that the Federal Government can use to go after California-compliant cultivators. For example, you can provide a randomized number to individuals who pay their fees, get the proper review of their project, and provide them with a certificate they can put at their grow site to prove compliance. This is similar in spirit to the State Medical Cannabis Patient ID Card system.
2) The 5th Amendment guarantees protection from self-incrimination. Mandating cannabis cultivators register, and putting registrants in a centralized database that could then be used by the Federal government to arrest and punish said cultivators, is counter to our rights as citizens of these United States until such time that Federal law is changed to allow cannabis cultivation.
3) Tier I should be much larger than it currently is, and as such Tier II should also increase in size. Six plants are far too few to require mandatory registration.

Plus, a square footage is superior to plant counts as a trigger, as that is a more realistic analysis of impact. Nutrient and water load would on average be the same for a given area regardless if there are ten or thirty plants.

4) Only commercial operators should have to register. For patients and caregivers who grow medicine for themselves and/or a small collective, there is a reasonable compensation allowable per State law, and they should not have to go through the red tape to have a home garden or small non-commercial garden with other patients.
5) Standards for cannabis cultivation monitoring and registration should be commensurate with other agricultural policies. We are unaware of any policy that states people who grow seven grape vines, seven hop plants, seven apple trees, etc, need to register to the extent proposed in your cannabis cultivation guidelines. This is an unfair policy if it is not evenly applied to other similar agricultural uses.
6) There is a presumption that by planting seven or more plants one is polluting the water. This is unfounded, and presumes guilt instead of proving guilt. Many cultivators use natural compost such as worm castings, or even plant directly into the earth with no other inputs than water. If there are sufficient setback from waterways, a slope that is not too steep, erosion is non-existent, and there are no other inputs other than organic methods there is no reason to presume that one is polluting the water; hence, it seems the NCRWQCB would lack the legal authority to mandate such registration.
7) CEQA mandates an EIR for substantial actions that can affect the environment. This is one of those times where a Negative Declaration is insufficient. You are looking to create a new policy with enormous environmental consequences, and as such should do the full EIR study.
8) Disclosure and amount of use of pesticides, herbicides, and other toxics used should be disclosed in the application process for large commercial operations.

Thank you for your attention to this matter.

Sincerely,

Craig Litwin
Representative
Citizens for Responsible Access

Manhard CONSULTING

Civil Engineering
Surveying
Water Resources Management
Water & Wastewater Engineering
Construction Management
Environmental Sciences
Landscape Architecture
Land Planning

June 8, 2015

North Coast Regional Water Quality Control Board
Attn: Matthias St. John, Executive Director
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Subject: Order #2015-0023 – Draft Waiver of Discharge Requirements from Marijuana Cultivation Public Review Draft Comments

Dear Mr. St. John,

Thank you for allowing Manhard Consulting the opportunity to comment on the *Draft Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region* (Order #2015-0023). We are submitting the following comment based on the Public Review Draft for Order #2015-0023:

21. Third Party Programs
According to Section 21, only Tier 1 and Tier 2 Dischargers have the option to participate and comply with Order #2015-0023 through an approved, third party program. Based on the description of the proposed tiering system, Tier 3 dischargers must develop and implement a cleanup and restoration plan, prepared by a California registered civil engineer or professional geologist ((I)(C)). In addition, Tier 3 dischargers must submit a water resource protection plan and comply with annual reporting as a Tier 2 Discharger is required to do.

I am requesting that Order #2015-0023 be revised to allow Tier 3 Dischargers to have the option to participate and comply with Order #2015-0023 though an approved, third party program in addition to Tiers 1 and 2.

Thank you for your consideration of the comment listed in this letter. Please do not hesitate to contact me at (707) 444-3800 with any questions or need for additional information.

Best,

Meghan Ryan
Project Manager

the Northcoast Environmental Center

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June 8, 2015

Matthias St. John
Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

RE: Comments on Draft Order R1-2015-0023, Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region

Dear Mr. St. John:

I submit the following comments on behalf of the Northcoast Environmental Center (NEC). The NEC's mission is to conserve, protect, and celebrate terrestrial, aquatic, and marine ecosystems of northern California and southern Oregon. Our membership and the communities we serve hold significant interest in the development of the subject order as it relates to one of the biggest threats to North Coast rivers, salmonid populations, and water supplies.

As the Regional Board's draft makes clear, the scale and scope of marijuana operations within fragile North Coast watersheds are increasing at an alarming pace with each passing year. Over 5,000 known grow sites exist in Humboldt County alone, with an estimated 20,000+ grows within the North Coast Region. A large percentage of these sites are a direct and immediate threat to water quality and quantity – with impacts including illegal water withdrawals, destructive grading, deforestation, and pesticide use. These environmental impacts are largely going unchecked due to the illicit nature of this industry, which has grown and thrived under prohibition for several decades.

Due to the history of unpermitted activity, and given ongoing harms in many of our region's waterways at the hands of an industry that has grown out of control, we are deeply concerned with the apparent lack of adequate resources for enforcement. Without a clear regulatory framework and a sufficient funding mechanism, the program will likely fail to protect sensitive streams and struggling salmon.

While we are concerned that the order as written may not go far enough to rein in egregious operations, we applaud the Regional Board for advancing a regulatory framework that is clearly a step in the right direction and we strongly support a number of elements in the draft.

Specifically, we support a tiered program that: 1) provides a clear pathway to environmental compliance for responsible growers with modest operations; 2) provides sufficient disincentives for those causing harm to

achieve compliance; and 3) provides clarity for law enforcement to focus limited resources where they are needed most.

With regard to scale, we support 2,000 square feet of total cultivation area as a reasonable threshold for Tier 1 operations. Any increase in the threshold for Tier 1 is likely to expand cultivation activities beyond already-unacceptable levels that exist today, and should not be considered under a Mitigated Negative Declaration. We further suggest that the order be amended to clarify that such a threshold applies to total cultivation area *per property* given that it could currently be interpreted as allowing numerous cultivation areas on an individual parcel.

On the issue of water diversions, storage and use, we strongly support the seasonal no-diversion period as defined. Water storage requirements and forbearance of water rights during times when streamflow is typically low is critical to protect already struggling salmon and steelhead populations. Furthermore, sites that do not have access to an adequate, sustainable water supply (e.g. operations reliant on water trucks or other means of water import) should not qualify for the program.

Addressing sedimentation and erosion from private unpaved roads is a critical component of the program, given hundreds of miles of poorly maintained roads are used to access cultivation sites throughout many watersheds that are listed as Impaired by sediment and/or turbidity under Section 303(d) of the Clean Water Act.

As to the issue of third party certifications, we believe that regardless of information maintained by private entities, the Regional Board should have publicly accessible information pertaining to all cultivation activities in the region, not just Tier 2 and Tier 3 operations.

Although there is much we appreciate in the Regional Board's considered action, we remain concerned that the draft order does not provide sufficient direction to bring irresponsible and unwilling operators into check. For this reason, we suggest amending Section 23 so that it clearly states, "…recalcitrant or uncooperative discharger[s]…*shall* be pursued." It should further clarify that the Executive Officer will take actions as appropriate to remedy ongoing harms to the public trust. It is unacceptable to further allow egregious operators to rake in profit at the expense of wildlife, downstream residents and the public as a whole.

On behalf of the NEC, our members and those who are not able to prepare their own letters of concern, I thank you for your consideration of our comments.

Sincerely,

Dan Ehresman
Executive Director

PACIFIC WATERSHED ASSOCIATES INC.

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June 8, 2015

Matthias St. John, Executive Director
North Coast Regional Quality Control Board
5500 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
northcoast@waterboards.ca.gov

Re: Comments on Draft Order 2015-0023 – Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region

Dear Mr. St. John:

Pacific Watershed Associates is pleased to provide comments on Draft Order No. 2015-0023, Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities. Based on our extensive experience in observing and cleaning-up illegal grading and other waste discharges, my staff and I have reviewed the Draft Order and proposed Best Management Practices and offer our constructive comments and suggestions on elements contained within the proposed Order.

Pacific Watershed Associates has many small landowner clients we work with to implement many of the elements and conservation techniques you are proposing in the Draft Order. Most of the small landowners who have contacted PWA and with whom we work, are interested in "doing the right thing" when it comes to land stewardship and water quality and fisheries protection. A fewer number have come to us in response to needing to correct permitting deficiencies or resource impacts they have encountered or created.

It is clear to us that most growers and small land owners are interested in protecting their properties and their watersheds, while being able to make a living, but often do not know what to do to achieve those goals. They are also interested in being compliant with laws to protect water quality and fisheries, as well as land development and management. Typically, these landowners need technical guidance and assistance to achieve these objectives, and we have been able to help them.

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, and/or funding to help defray the costs of working with qualified, approved Third Party Groups. At the same time it is important that the final Order contain realistic, achievable objectives and measures. If the standards are too strict and largely unenforceable, landowners will have little chance of achieving compliance and little incentive to work hard to do so. Likewise, if the final Order is too inclusive for all the very small landowners, it is doubtful you and your staff will have the capability or capacity to be responsive to the large number of landowners residing in our north coast watersheds.

Please let us know if you have any questions regarding our comments. We'd be happy to assist you in whatever manner we can.

Sincerely,

PACIFIC WATERSHED ASSOCIATES INC.

William Weaver, PhD, Principal
billw@pacificwatershed.com

Enclosure(s): Comments on Draft Order 2015-0023

Pacific Watershed Associates

Comments on Draft Order 2015-0023

Waiver of Waste Discharge Requirements and General Water Quality Certification
for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities
or Operations with Similar Environmental Effects in the North Coast Region

Overview (*Draft Order, page 1*)

- Item #2, Page 1 (footnote) - The plant numbers (12 immature or 6 mature plants) are currently lower than most of the county regulations within Region 1. These plant numbers are set so low that anyone cultivating will end up being required to sign up for this program. This may be the intent but it could also be cost prohibitive for most cultivators and could result in landowners increasing production to cover the cost, thus increasing their water use. It might be preferred to increase the lower plant limit to a number that is expected to more frequently result in significant site construction activities or water use impacts.
- Item #2, Page 1 (footnote) - This program also pertains to "Operations with similar environmental effects" so the plant limit would be irrelevant for those other cultivation operations that do not pertain to marijuana. As a result, other standards of operational scale and potential impact would need to be specified so those landowners will know if they are also subject to the Order.

Program Framework (*Draft Order, page 5*)

- All three Tiers state there will be no direct diversion of surface water from May 15th to Oct 31st. Are there any allowances for drinking water to be diverted during this time frame? If not, will there be any funding to assist rural landowners with the filtration system required to make stored water drinkable?
- Third party Program (*Draft Order, page 7*)
    - We are pleased the Water Board has proposed the creation of a third Party Program to help implement this program. There are many complicated, interconnected elements to this program. Based on our work so far, it would <u>not</u> be reasonable to expect small landowners to have the time or the expertise to understand or correctly implement all program elements that are needed to be in compliance. A simple example is in the 21 years since the Handbook for Forest and Ranch Roads was published, the north coast watersheds are still riddled with poor quality roads that continually and cumulatively impact water quality.
    - We believe Third Party involvement and technical expertise will be required during most aspects of plan development, enrollment, monitoring and implementation. Most

landowners will not be able to provide an effective and unbiased evaluation of their developed property for agency staff to review and approve.

- There does not appear to be a clear explanation of what it is required become an approved Third Party Program provider in the Draft Order? The Regional Board should clarify the process by which the third party can become approved, and the minimum qualifications, licensing and experience each applicant third party must have to qualify for the program. Qualification should not be left to individual negotiations or proposals – it should be a published and thoughtful program that has specific registration and qualification criteria. It is important to have consistent standards and qualifications so both landowners and the Water Board know what is expected in the quality and type of service each approved Third Party can provide. Not all Third Parties will be qualified to conduct or advise on all aspects of the Order and its various technical elements.

Procedure (*Draft Order, page 10*)

- Self-certification by individual landowners, while presenting a potential cost-savings benefit to the smallest participants, can be problematic when multiple, complex and technical elements of the program must be achieved and certified for compliance. The Water Board will have limited ability to inspect and enforce measures at the large number of properties that are likely to be subject to this Order. For this reason, we believe it is important that qualified Third Party Programs serve as approved liaisons between rural landowners and the Water Board. Most landowners, if given the opportunity and financial ability to operate under a qualified and approved Third Party Technical Provider, would likely choose to do so.
- For Tier 3 Dischargers, a high degree of technical expertise element is almost always needed to develop the work plan and construction oversight that is usually needed for a private landowner to successfully come into compliance. The Water Board must be able to rely on the technical expertise of the person preparing the plan and overseeing its implementation. A technical expert can react to changing site conditions, and provide an unbiased decision when to permit or require on-site modifications of the enrollment, monitoring, and reporting program plans.
- We believe that some form of positive incentive (other than threat of enforcement) be put in place to help small landowners meet the Order's intent and obligations. That incentive could be financial or cost-sharing, or it could be of some other nature that would help relieve the financial burden of complying with the new Order. Work produced by an approved Third Party will save the Water Board and its staff significant time and expense by assuring the Board of the conditions and the measures that have been properly put in place at the properties participating landowners. That internal cost savings could be used to leverage resources that would benefit the small landowner.

1.A. Standard Conditions Applicable to All Dischargers (*Draft Order, page 13*)

- 1. Site maintenance, erosion control and drainage features (*Draft Order, page 13*)

- A.1.b - This measure addresses the requirement for having adequate surface drainage to *prevent and minimize erosion*. For water quality protection, the goal should actually be to prevent or minimize sediment delivery to surface waters (not erosion).
- A.1.c – This measure requires surface runoff to be directed away from slope instabilities so they do not cause slope failure. This is a good general goal, but for water quality protection the key element is to not cause slope failures that would deliver sediment to surface waters. Slope failures by themselves are a maintenance problem but only those that deliver sediment to a stream or other surface waterbody are the ones that will impact water quality. That is where the limited finds and resources of small landowners should be prioritized to protect water quality.
- A.1.d – This measure addresses sediment delivery associated with erosion and sediment transport on hydrologic connectivity roads and other bare soil areas. It calls for these areas to be "*hydrologically disconnected from surface waters*." This is an achievable goal for many types of bare soil areas, including pads, fills, cuts and most other disturbed areas. However, it can rarely be achieved for roads that have stream crossings. The presence of stream crossings on a rural road dictates that there will likely be some minimal hydrologic connectivity, and that measures to disconnect these road reaches can only be partially successful. Hydrologic connectivity should be reduced as much as is reasonably feasible. Connectivity standards for roads could be restricted to stream crossing approaches (e.g., no more than 100 ft connectivity on each approach) and their surfacing (e.g., connected road reaches should be rock surfaced to minimize erosion).

- Stream Crossing Maintenance (*Draft Order, page 13*)
  - A.2.a - It is unclear if the 100-year design standard is for new stream crossing installations, or if it applies to all existing stream crossings and will mandate landowners to upgrade all their crossings to meet the new standards.
  - A.2.a - It is unclear if the 100-year design standard applies to all appurtenant roads, or only to roads and stream crossings on the land under the Order.
  - A.2.a – Finally, culvert and drainage structure sizing is not the only way to accommodate or pass large woody debris in transport. The stream crossing standard should allow other methods of dealing with debris, including inlet structures and debris barriers/screens.
  - A.2.c – The directive to "prevent **and** minimize" erosion from exposed surfaces is a conflicting statement. Prevention is usually not possible unless every surface is covered and completely protected. At a minimum, the road surface will remain exposed, so we suggest the standard be to "minimize" erosion that would result in sediment delivery to the waterbody.
  - A.2.d – It is not always possible to align both the inlet and outlet of a culvert with the stream channel if the stream has any bend within the crossing. It is most important to have the inlet aligned with the upstream channel, so as to allow debris to be directed through the culvert. If the outlet is not perfectly aligned, armoring can be applied to

protect the streambank. The wording of this item could be changed to require the applicant to explain and justify if they are proposing to deviate from this requirement.

  - A.2.e – Sometimes it may not be possible to install a critical dip at a stream crossing, such as some crossings with very shallow fills (a dip might not be possible) or where the crossing is installed on a very steep road grade (a dip would make the road too steep to drive). Alternatives should be allowed in certain circumstances, including the installation of emergency overflow culverts and/or the use of oversized culverts, flared inlets and debris racks that reduce the chance of culvert plugging, instead of a critical dip. The wording of this item could be changed to require the applicant to explain and justify if they are proposing to deviate from this requirement.

- Riparian and Wetland Protection and Management (*Draft Order, page 14*)
  - A.3.c – Buffers are required between "production lands and associated facilities" and waterbodies, but it is not clear if roads are considered to be an "associated facility" and therefore subject to the buffer requirement. We believe the requirement to minimize or prevent hydrologic connectivity (A.2.e) should be adequate to substitute for the buffer requirement for pre-existing roads, and perhaps even for newly constructed roads.
  - A.3.c – It is unclear if pre-existing property improvements or facilities require buffers, or only new facilities.
  - A.3.c – It is possible that some new "facilities" or pre-existing improvements on a property may not be "associated" with production. Do these require buffers?
- Spoils Management (*Draft Order, page 14*)
  - A.4.b – The concept of spoils stabilization and/or containment should be to prevent sediment delivery to a waterbody, not to prevent erosion. Unprotected spoils might be placed far away from a waterbody and present no threat to water quality even if they erode. We suggest the standard be changed to: *Spoils shall be adequately stabilized or contained to prevent sediment delivery to surface waters.*
- Water Storage and Use (*Draft Order, page 15*)
  - A.5.a – Planning watersheds often include more than one hydrologic watershed. Thus, one or more hydrologic watersheds within a Planning Watershed (CalWa) could be "drained dry" by water use and extractions while still meeting the overall requirement for water use in the larger Planning Watershed. For this reason, water use restrictions should be based on hydrologic watersheds at some scale, not on Planning Watersheds.
  - A.5.a – The intent of this prescription is fair and environmentally responsible, but will be next to impossible to implement or enforce. The adoption of this element means that many landowners will be in violation of this Standard Condition, and therefore not able to be in compliance with the Order. Much more data is needed for each watershed, and much more communication and cooperation is needed before this can become a reality. As stated and required in the Draft Order, many (or most) water users will not be in compliance; sometimes or oftentimes through no fault of their own.

- The ability of each individual water user to minimize the cumulative effects of all other water users in a CalWater planning watershed will not be possible; it is not possible for any one water user to evaluate or control the others without real time flow data, as well as coordinated water use planning, agreements and operations. This Order requires compliance to this standard but provides no mechanism for it to happen; that mechanism is not in place and will not be for some time, thereby making compliance improbable or impossible, and likely out of reach. All landowners in a watershed often cannot or do not communicate or cooperate in the manner that would be required by this prescription. It is human nature and one landowner doing their best to abide by the cumulative requirements for water use could become at-fault or illegal in their operations simply because one or more other landowners are ignoring or exceeding their theoretical allotment and taking more water that they should.
- The mechanisms for determining basin-wide water quality and water quantity conditions and standards, and the mechanisms for ensuring landowner coordination and cooperation to ensure those minimum conditions, are not in place and available to individual landowners; nor is it likely to be anytime soon. Even though something of that nature is needed to address cumulative effects, it will require determining minimum flow requirements for each stream, determining needed (or desired) water use requirements for each landowner, and then developing the maximum volumes and timing of extractions among all landowners.
- For these reasons, it is likely that the only feasible mechanism that could be implemented immediately is for the Water Board, or another regulatory agency (e.g., SWRCB, CDFW, DWR, etc.), to determine and mandate water quantity and water use levels (volumes) for each and every landowner in a watershed, until and unless the landowners can develop a cooperative mechanism to accomplish the stated objectives for the protection of water quality and beneficial uses in this Draft Order.

- A.5.b – Water conservation measures should be <u>required</u> to be implemented. If landowners are going to be involved in a significantly water consumptive activity, like agriculture, they should be required to implement water conservation measures. We cannot think where it would be impractical to do so, and if they cannot be implemented then perhaps that water use activity should be discouraged or disallowed.
- A.5.c – If Tier 2 Dischargers are drawing water from a stream they should be <u>required</u> (rather than encouraged) to develop off-stream storage facilities, unless they can explain and justify why they cannot meet that requirement. Such an off-stream storage requirement could be a part of this order and/or included as a condition of their water rights permit(s).

- A.5.c - Water storage must be off-stream, not in watercourse: Will there be no ponds in Class 3 streams? If there are ponds on the site how will they be permitted or will they have to be removed?
- A.5.c - Tanks over 8,000 gallons require a concrete foundation: This is not currently a county building code for all counties in Region 1. Will tanks that are installed be grandfathered in or will they have to be removed and reinstalled? Many landowners have installed large storage tanks to the manufacturers' specification and that does not require the concrete foundation or tie down straps for wind.
- A.5.d – We suggest the following change in wording: *Water is applied using <u>no more</u> than agronomic rates*. (rather than <u>at</u> agronomic rates)
- A.5.e – The word "should" should be replaced with "shall" in this element, so that it becomes a requirement to operate one's diversions in this manner, and not an elective practice.
- A.5.f - In the event of any containment failure, water will be released. Does this measure mean that secondary containment (such as a bermed basin) must be capable of retaining and holding the stored water (e.g., from a failed tank) such that none of that clean water reaches a waterbody?
- A.5.f - If a water storage pond is located adjacent or within a stream, or even on a ridge some distance away from surface waters, it will likely be discharged into that watercourse if the containment fails. The most important things for a storage pond are proper siting, engineering design, and construction. Overflow protection should be a part of the design to prevent failure, but if it still fails then secondary containment is not likely to be feasible or successful. We would suggest, in the specific case of a water storage pond, that the wording "in the event of a containment failure" be removed from the end of the last sentence. For ponds, as well as for other containment structures, the applicable specification should be for proper siting, engineering design, construction and maintenance, including as a response to seismic events, rather than for containment if it fails.

1.B. Water Resources Protection Plan (*Draft Order, page 17*)

- *Any proposed improvements to watercourse crossings shall be submitted to the Regional Water Board…* (*Draft Order, page 18*). Does this include improvements related to maintenance activities, such as installing an inlet debris barrier, a flared inlet, a downspout or energy dissipation device at a culvert outlet, adding gravel to the surface of the stream crossing, or armoring the inlet or outlet fillslope?
- Any proposed work on a stream crossing will likely require a CDFW 1600 Agreement, and they would provide technical evaluation and approval of the conditions of that work. The Water Board could simply state that requirement and relieve themselves of a duplicative task.

1. C. Cleanup and Restoration Plan (*Draft Order, page 19*)

- C.3.c – "Restore natural slope contours to ensure dispersed surface flows." Complete site recontouring, as is implied for this restoration technique ("restore natural slope contours"), is generally not necessary to ensure dispersed surface flows. There are a number of methods that can be employed to disturbed surfaces to ensure dispersed surface runoff. These can include ripping and disaggregation of gentle slopes (to prevent surface runoff), partial outsloping, and/or installation of frequent cross road drains. In addition to these techniques, heavy surface mulching acts to minimize surface erosion and disperse surface runoff. Complete recontouring is usually not required to meet this objective.
- C.3.c – There may be situations where one does not want to restore natural slope contours. For example, if the cutbank contains springs or seeps it is not recommended that spoil materials be placed against that slope to accomplish full recontouring. Similarly, if the slope is unstable, spoil material should not be loaded onto the unstable road or cut surface to accomplish outsloping.
- C.3.c – We would suggest wording such as: "Provide for free draining, dispersed runoff from all disturbed surfaces during restoration work, such that hydrologic connectivity is eliminated, gullying is prevented, and water is directed to stable slope areas. Unstable sidecast spoil materials shall be removed or stabilized so they do not fail and deliver sediment to a nearby waterbody." Identification and prescription of this last restoration element may require consultation with a qualified geologist.

General Terms and Provisions (*Draft Order, page 22*)

- III.J – As stated, the Draft Order does not state or imply that the Water Board is regulating or permitting the cultivation of marijuana; just the opposite. That is the purview of other regulatory entities, include law enforcement. Instead, the Water Board should make sure that any operations (cultivation or otherwise) that occurs in those zones should still be regulated to protect water quality under this Order. The Draft Order should specifically apply to <u>all</u> relevant operations ("*Operations with Similar Environment Effects*") regardless of how close they are located to a school, park or military base. In its title, the Draft Order is said to apply to all "…*Operations with Similar Environment Effects*" and not just to marijuana cultivation (which may otherwise need to be restricted from those zones). There are a lot of other activities, including various agricultural activities, which probably should be similarly regulated in these areas.

Best Management Practices (BMP) (*Draft Order, Appendix B*)

I. Introduction

Appendix B is a set of Best Management Practices (BMP) that, according to the Draft Order, are to be "considered enforceable conditions under the Order." However, we found many or most of the BMPs in the Draft Order to supply guidance and possible treatments, but not in an enforceable manner. Most do not contain treatment standards which would lend themselves to enforcement. There are numerous publically available manuals that identify appropriate BMPs for construction sites and roads (e.g.,

stream crossings and all road-related design, construction, and maintenance work). For example, the newest, 2015 editions of the Handbook for Forest, Ranch and Rural Roads contains appropriate BMPs for stream crossings and all road-related design, construction, and maintenance work. Similarly, the Construction General Permit has BMPs for construction site management and pollution control. Rather than reinventing the wheel, we suggest you adopt one or more of those manuals, and their standards, as general BMPs for this program, or selectively extract those BMPs you would like to see made part of Order #2015-0023.

II. Standard BMPs for Construction *(Draft Order, Appendix B, page 1)*

- II.A – General BMPs to Avoid or Minimize Adverse Impacts *(Draft Order, Appendix B, page 1)*
  - Temporal Limitations on Construction
    - The term "rainy season" is not defined.
    - The term "significant rainfall" is not defined.
    - The term "A 3-day (72 hour) forecast of rain" is not defined. Does the forecast involve a certain % chance of rain, or is the forecast of a certain rainfall depth? For example, a 3-day forecast of 10% chance of rain should not stop construction. In contrast, a 3-day forecast of 1 inch of rain 3 days from now should require preparations.
  - Limitation on Earthmoving *(Draft Order, Appendix B, page 1)*
    - "Upon completion of grading, slope protection of all disturbed sites will be provided prior to November 1…" In this BMP, are roads and road cutbanks considered "disturbed sites?"
  - Limitations on Construction Equipment *(Draft Order, Appendix B, page 2)*
    - "Heavy equipment may not be used in flowing water." There may be exceptions where heavy equipment must pass through flowing water to implement a BMP or install a stream crossing. The conditions for this activity would be necessarily approved within the requisite CDFW 1600 Notification.
    - Two BMPs in this section indicate that rubber tired equipment is the preferred equipment type for crossing certain streambed substrate types. Typically, tracked equipment is preferred by CDFW and other agencies for use in streambeds because they exert a significantly lower unit ground pressure (psi) that wheeled equipment, and tracked equipment is less likely to cause severe compaction of the substrate.
  - Restoration and Removal of Exotic Plants *(Draft Order, Appendix B, page 3)*
    - The BMP for revegetation (planting and seeding) of streambanks and areas of exposed soil specifies that planting should be completed prior to November 1 of the year work is completed. Ideally, planting should occur after November 1, during the winter wet season, so there is sufficient soil moisture to sustain the plants until they become established and supplemental irrigation is not required.

Seeding for groundcover can be completed just prior to sustained rains, but planting too early is likely to result in high rates of mortality.

- Erosion Control *(Draft Order, Appendix B, page 4)*
  - The proposed BMP for erosion control timing is to have all such works "installed at the time of construction." The wording might be changed to allow for more orderly and cost-effective installation. For example, large blocks of erosion control work (e.g., hand labor mulching and planting) is most efficiently performed at one time, rather than concurrently with operations. Typically, erosion control measures are installed prior to the end of construction and before the beginning of the wet season (here, October 15). Any continuing, approved project work conducted after October 15 should have erosion control works completed up-to-date daily with construction work, and prior to each weekend if the forecast calls for rain during that period.
  - "Effective erosion control measures will be in-place at all times during construction." This BMP is probably not necessary, and will result in a large waste of erosion control materials and labor. Typically, erosion control measures are required to be kept up-to-date with construction work during the wet weather season if operations are approved and being conducted during dry periods. Otherwise, during the dry construction season erosion control materials are required to be on-site, but not to be installed unless precipitation forecasts reach some clearly-defined threshold.
- Miscellaneous *(Draft Order, Appendix B, page 5)*
  - A variety of miscellaneous BMPs are listed or described in this section. Many are educational without specific standards for the landowner to follow. We suggest the Water Board follow existing BMPs described in relevant manuals for inclusion in the Order, including road and stream crossing location, bridge design and construction, dust control, surface drainage and many others. Relevant BMP manuals are found in the most recent literature and many BMPs exist for precisely the same construction and restoration activities that are described in the Draft Order.

- II.B - BMPs for Specific Activities *(Draft Order, Appendix B, page 6)*
  - Critical Area Planting… *(Draft Order, Appendix B, page 6)*
    - A BMP calls for straw mulch to "*be secured to the ground using hand tools or by placement of jute matting*." This BMP is too broad and not necessary in most circumstances. Straw mulch typically needs to be tacked in place or covered only where bare slopes are steeper than about 50% (2:1) in gradient, or where wind is strong enough to otherwise blow it away. Additionally, where it is needed, mulch can be tacked to the ground using a variety of techniques other than jute netting.

- "*Planting above the high water line may occur at any time of the year*." This BMP may be technically accurate, but it is not advisable to suggest people plant during the dry season. Planting in most areas of the North Coast should be timed for November through March when soil moisture is suitable for plant survival and irrigation is not needed. Unless a dry site is to be artificially watered, only perennially wet zones along streams and in wetlands should be planted in drier parts of the year.

- Limitations on Work in Streams and Permanently Ponded Areas *(Draft Order, Appendix B, page 6)*
  - "*If it is necessary to conduct work in or near a live stream…*" This BMP conflicts with the previous Limitations on Construction Equipment (Draft Order, page 2) which states that "*Heavy equipment will not be used in flowing water*." We believe there are circumstances where heavy equipment can and should be allowed to be employed in flowing water, provided biological clearances have been taken.
  - This section also repeats the preference for using rubber tired heavy equipment when working in a channel, as was previously stated in the Limitations on Construction Equipment (Draft Order, page 2). Typically, tracked equipment exerts a significantly lower ground pressure (psi) that wheeled equipment, and tracks are less likely to cause severe compaction of the substrate. For this reason, rubber tired equipment is not always preferred and may cause more harm than tracked equipment.
- Temporary Stream Diversion and Dewatering: All Live Streams *(Draft Order, Appendix B, page 7)*
  - "*Coffer dams will be constructed with the use of off-site river-run gravel and/or sand bags*." Users should be encouraged, or at least offered the option, to use on-site gravels, as long as disturbance to the channel is minimal. This would eliminate the need to trucking and fuel use to import gravel. Because coffer dams are usually small structures used to pond water for gravity or pumped diversions of streamflow, the amount of required gravels is often minimal and readily available from elevated bars and terraces. Oftentimes, a temporary sump is dug in the channel bed upstream from the construction site with heavy equipment, and gravel for berming is obtained during that process.
  - Gravity diversions are the only method listed in this BMP section. Pumping should also be listed as a BMP dewatering technique. Sometimes pumping is necessary in order to move water around the active construction site. A combination of day time pumping and night time gravity diversions are often used at a single construction site to maintain flows 24 hours a day. In this manner, night time and weekend gravity diversions negate the need for continuous pump management.

III. BMPs for Site Maintenance and Operations *(Draft Order, Appendix B, page 8)*

- III.A - Site Maintenance, Erosion Control, Drainage Features *(Draft Order, Appendix B, page 8)*
    - This section is a descriptive discussion of things one should consider and perhaps implement to limit erosion and potential impacts of project work. This educational section appears to be designed as an introduction to erosion control. As written, it would be difficult to generate enforceable standards without being much more specific. There are many BMP manuals covering appropriate erosion and sediment control techniques for roads and construction sites, and perhaps some of those should be referenced and included as possible standards for this type of work. There is no reason to re-invent the wheel; otherwise, this section should be re-written in much more specific detail and with enforceable standards.
- III.B – Stream Crossing Maintenance (*Draft Order, Appendix B, page 9*)
    - Rock fords (*Draft Order, Stream Crossing Maintenance, paragraph 2, page 9*) are not defined in this section. Fords are stream crossings where vehicles drive on the bed of the stream. Rock fords are fords with soft bottoms in which rock has been added to the streambed to make it firm enough such that vehicles can drive across without sinking into the streambed and generating a lot of mud, turbidity and associated impacts. In contrast to these crossing types, armored fills are stream crossings that are built with fill material that has been armored with rock so the underlying fill is not subject to erosion during periods of runoff. Armored fills are typically restricted crossings of Class 3, ephemeral streams.
    - *Regular inspections of stream crossings*…is one BMP listed in the Draft Order. Under this BMP (middle page 10), there are three bulleted practices listed.
        - Bullet #1: The first calls for removal or reorienting of large wood upstream or in a crossing that could impeded flow or capture additional debris. We believe that reorienting instream debris is a risky practice with uncertain results, and that if you are going to handle the debris anyway, it should just be removed from the channel.
        - Bullet #2: If sediment is naturally accumulating within a culvert it is likely because a) the culvert gradient is too low, or the velocities are too low, to keep it naturally flushed clean under normal streamflows, b) the outlet is plugged or partially plugged so that sediment is deposited in a backwater setting, or c) the culvert is set too low within the stream bed. If the culvert is not changed in slope, diameter, or elevation (relative to the streambed) then it will fill with sediment again and require continued maintenance. Stream crossings should be designed or redesigned to require minimal maintenance or cleaning.
        - Bullet #3: This BMP calls for regular inspections of ditch relief culverts (DRC), which is a good idea. However, it is not a good idea to install trash racks or single post barriers in the ditch at the inlets to ditch relief culverts. Trash barriers are

only suitable for some stream crossing culvert inlets, not for ditches. No ditch should carry enough runoff to carry large wood that needs to be screened.

- We would also suggest that 24" diameter pipes be the minimum standard size for use as ditch relief culverts. This will reduce the potential for DRC culvert plugging.

  - The final paragraph of Section III.B states that *"…the road surface over the culvert shall have a critical dip…"* We have already addressed some problems with this standard (see A.2.e, above). Sometimes it may not be possible to install a critical dip and at a few locations (for example on a road within the floodplain) it may not even be needed to prevent overflow damage. Alternatives should be allowed in certain circumstances, including the installation of emergency overflow culverts and/or the use of oversized culverts, flared inlets and debris racks that reduce the chance of culvert plugging. The wording of this item could be changed to require the applicant to explain and justify if they are proposing to deviate from this requirement.

- III.C - Protecting Stream and River Corridors *(Draft Order, Appendix B, page 10)*
  - This section either needs to be completely re-written and generalized to provide general landowner education, or completely revised to provide more functional and enforceable BMP standards, if that is the intent in the Draft Order. There is a lot of published science on the benefits and use of woody debris in streams, and the current summary does not reflect that knowledge. The general guidance provided for woody debris in streams is insufficient and does not currently contain BMPs.
  - Although correctly stating that wood size will need to vary with stream size, specifying general "log" size of 4" diameter and 6' length is not useful and will be misleading to uniformed landowners wishing to comply with the Order. Guidance suggesting that "*LWD needs to extend into the bankfull channel at least four inches*" is also inadequate and provides inaccurate and incorrect guidance to apply as a generalized BMP for landowners to follow.
- III.D – Spoils *(Draft Order, Appendix B, page 11)*
  - The wording in the introductory paragraph: *"…it is advisable to implement the following measures…"* makes it unclear if these are required BMPs or just suggestions and ideas. A BMP manual should have standards and techniques for achieving and complying with each practice.
  - Spoils should not be placed or stored in locations where soils are wet or unstable, or where slope stability could be adversely affected.
  - The last paragraph (*Draft Order, page 12*) specifies that spoils should be seeded and then mulched with straw at a rate of 1 to 1.5 tons/acre. However, previously (Section II.B) the BMP for covering exposed soils was listed at 2 ton/acre. These should probably specify the same mulching rate: 2 tons/acre.
- III.J – Cleanup, Restoration, and Mitigation *(Draft Order, Appendix B, page 16)*

- This section contains no real BMP or guidance for the landowner to follow. We assume that each Cleanup and Abatement Order will contain the details that are required for each individual project.
- Soil bioengineering is a technique that requires considerable knowledge and some experience to successfully employ. Asking landowners to employ this technique with little or no guidance leaves a lot of room for failure.
- The BMP "Use soil bioengineering techniques when possible for restoration…" leaves a lot to the imagination. It is almost always "possible" to use one or more bioengineering techniques on a restoration project, but does this imply that if they do not use them they will not be in compliance with this BMP?
- Many bioengineering techniques, unless they are applied in wet soils or along streambanks, will require watering if they are applied on hillslopes or other bare soil areas. This may not be a good practice to universally encourage in a program that is trying to minimize dry season water use.
- The selection of bioengineering in this section, and the exclusion (lack of mention) of other practices, may incorrectly imply to uninformed landowners that bioengineering is the best and perhaps most preferred path to site restoration. In reality, many other restoration practices are both suitable and necessary in most Cleanup and Restoration projects, and should be mentioned or explained along with the option for the selected use of bioengineering techniques.

Dear Members California Water Quality Control Board, North Coast Region;

The water board's proposed regulations cited within the California Regional Water Quality Control Board, North Coast Region Order No. 2015-0023, DRAFT Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects In the North Coast Region, are arbitrary and capricious.

I formerly sat on the San Francisco Board of Supervisors appointed, *Medical Cannabis Task Force*. During my time seated on the *Task Force*, the federal prosecutor in the Northern District requested medical cannabis Dispensary permitting records from the Department of Public Health (permit inspector). Many of these records were disclosed. Even with redacted records, sensitive information was disclosed that could potentially risk collective members for federal prosecution. San Francisco re-designed its dispensary application program based on this experience, so that minimal information was kept through a checklist type system.

In Mendocino the 9.31 program allowed for applicants to cultivate up to 99 plants with zip ties issued by the sheriff. Federal prosecutors again requested records of many cultivators who had been approved in this program. Mandatory inspections included similar compliance measures, erosion control, water sources, and no chemical storage in potential contaminant locations. This program was ultimately stopped due to pressure from federal agencies.

It is important we learn from prior programs, in order to prevent similar consequences from taking place.

Without submitting any supporting studies, or any other reasonable scientific basis, the water board has self proclaimed that,

> "increase in use and cultivation of marijuana since the voters' passage of the Compassionate Use Act (Prop 215) and the legislature's passage of AB 420, the unregulated activity of marijuana cultivation has grown increasingly year by year, with land area under cultivation increasing exponentially over the past decade. The increased cultivation throughout the North Coast Region has resulted in significant waste discharges and a loss of instream flows associated with improper development of rural landscapes on privately owned parcels, and the diversion of springs and streams, to the cumulative detriment of beneficial uses of water."

There was a complete failure to identify with any specificity the amount of marijuana cultivation has increased.

There was a complete failure to identify, with any specificity, the impacts that are actually caused by marijuana cultivation.

There was a complete failure to identify, with any specificity, the amount of water marijuana cultivation consumes.

There was a complete failure to identify, with any specificity, the circumstances related to marijuana cultivation, which actually cause an impact.

The water board has failed to demonstrate that marijuana cultivation in of itself causes impacts.

Finally, the water board has failed to discern between the obvious - that is small marijuana cultivation projects cause no impacts whatsoever. Obviously the excluded 6 plant cultivation project would not cause an impact. But where is the line to be drawn? Is it to be drawn based upon plant numbers? Or is it to be drawn upon plant canopy? Obviously six marijuana plants (8 feet in diameter - 50 square feet each) will fill three hundred square feet of canopy. How many smaller plants can fit in the same canopy - 100, 500, 1000?

How does the canopy size affect impacts? Clearly it does not, until the canopy reaches a size which is on the scale of true farm. Again where is the line to be drawn and on what basis? Is the threshold 1 acre, 2 acres, 10 acres? Without any valid science, determining the threshold is nothing more than reading tea leaves.

The next obvious question that must be addressed is how much water does a marijuana plant consume? Where is the science here? With respect to water consumption, how is a marijuana any different from any other plant?

Now we turn to Section 4 of the DRAFT Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities of Operation with Similar Environmental Effects in the North Coast Region.

Starting with the term "associated activities." This term is unconstitutionally vague. What does it mean? Does the water board assume that it has a right to intrude upon a person's property rights because that person smokes or eats marijuana? Does the water board assume that it has a right to intrude upon a person's property rights simply because that person decided to cultivate marijuana? What about the person that simply trims marijuana? Again where is the line drawn and what is the justification?

THE ONLY TRUE ISSUE IS THE UNSPOKEN OBSERVATION THAT MARIJUANA IS A POLITICALLY INCORRECT PLANT.

The water board does not have the right to regulate "maintenance of developed eas and drainage features," solely on the basis that a person is cultivating a politically incorrect marijuana plants. To do so is an unlawful taking.

The water board does not have the right to regulate "stream crossing maintenance culvert and non-culverted stream crossing installation, culvert cleaning, culvert improvement and repair, and culvert and non-culverted stream crossing replacement," solely on the basis that a person is cultivating a politically incorrect marijuana plants. To do so is an unlawful taking.

The water board does not have the right to regulate "Activities within and adjacent to wetlands and riparian zones," solely on the basis that a person is cultivating a politically incorrect marijuana plants. To do so is an unlawful taking.

The water board does not have the right to regulate "Spoil [*sic - soil*] storage and disposal," solely on the basis that a person is cultivating a politically incorrect marijuana plants. To do so is an unlawful taking.

The water board does not have the right to regulate "Water diversion, storage, and use," solely on the basis that a person is cultivating a politically incorrect marijuana plants. To do so is an unlawful taking.

The water board does not have the right to regulate "Water diversion, storage, and use," solely on the basis that a person is cultivating a politically incorrect marijuana plants. To do so is an unlawful taking.

The water board does not have the right to regulate "Irrigation runoff from marijuana cultivation and other similar growing operations," solely on the basis that a person is cultivating a politically incorrect marijuana plants. To do so is an unlawful taking. This one is particularly troubling because it is also unconstitutionally vague as to "similar growing operations." What is a similar growing operation? Do these terms include a person's vegetable garden. Does it include the cultivation of native plants? What about ornamental plants? Is the only means to escape the water board's intrusion is to completely remove all plants from one's property? Should a person simply pave over his/her entire property? The absurdity of these proposed regulations appears to be raising its ugly head.

The water board does not have the right to regulate "Fertilizer, soil amendments, petroleum products, biodiesel, and pesticide/herbicide/rodenticide storage, use, and waste disposal," solely on the basis that a person is cultivating a politically incorrect marijuana

plants. To do so is an unlawful taking.

The water board does not have the right to regulate "Waste handling and disposal, including empty soil/soil amendment/ fertilizer/pesticide bags and containers, empty plant pots or containers, dead or harvested plant waste, spent growth medium, and other cultivation-associated wastes," solely on the basis that a person is cultivating a politically incorrect marijuana plants. To do so is an unlawful taking.

The water board does not have the right to regulate "Household refuse, human waste and domestic wastewater," solely on the basis that a person is cultivating a politically incorrect marijuana plants. To do so is an unlawful taking. This is another particularly troubling proposed rule. How is "household refuse, human waste and domestic wastewater," any different between a marijuana cultivator and a turnip [or insert any plant here] gardener? This is clearly a regulatory taking of property.

Finally, the water board does not have the right to regulate:
Site remediation/cleanup/restoration activities including, but not limited to removal of fill from watercourses, stream restoration, riparian vegetation planting and maintenance, soil stabilization, erosion control, upgrading stream crossings, road out sloping and rolling dip installation where safe and suitable, installing or maintaining water bars, ditch relief culverts and over side drains, stabilizing unstable areas, reshaping cut banks, and rocking native-surfaced roads," solely on the basis that a person is cultivating a politically incorrect marijuana plants. To do so is an unlawful taking.

The bottom line here is the fact that no one would tolerate the water board's regulation if they applied to a grass lawn, carrots, or a person's tomato garden. The mere fact that a person is cultivating marijuana, with noting more, does not provide the government a right to intrude into a person's property rights, or the right to burden a person with regulatory compliances solely on the grounds that they are cultivating a politically incorrect plant.

Therefore, for the forgoing reasons, the water board's proposed regulations cited above are arbitrary and capricious.

I appreciate your time and consideration on this matter, and look forward to working with you in the future as these draft changes are amended and developed,

Sarah Shrader
Chair of the Sonoma Chapter of ASA
[redacted]

AmericansFor SafeAccess
Advancing Legal Medical Marijuana Therapeutics and Research

Sonoma ASA Chapter

Re: Waiver of Waste and Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation

June 8th, 2015

Dear Members California Water Quality Control Board, North Coast Region;

Thank you for work put into the recent draft for cannabis cultivation, as it is clear the intent of this Draft Waiver of Waste Discharge Requirements and General Water Certification is to preserve the quality of water and protecting the surrounding eco-systems from further damage. This draft order No 2015-0023 regulates cultivation in a manner that falls beyond water protections, including compost of plant materials.

The Compassionate Use Act of 1996 (HSC 11362.5) clearly allows a Qualified Patient to cultivate the amount of medical cannabis required for their personal use. In 2010, The California Supreme Court issued a unanimous published decision in *People v. Kelly*, striking down what it considered unconstitutional legislative limits on how much medical cannabis patients can possess and cultivate. Any restriction including mandatory registry, or permitting costs that would prevent a patient from supplying their own medicine, would go directly against our medical rights as patients.

The Medical Marijuana Program Act (HSC 11362.5) required California counties to issue a voluntary medical cannabis identification card for patients. Nothing in the MMPA requires a qualified patient to obtain a medical cannabis identification card to grow his or her own medical cannabis. Likewise, designated primary caregivers or members of a cooperative or collective association of qualified patients and primary caregivers are not required to obtain a medical cannabis identification card to grow medical cannabis individually or collectively.

At a recent Sonoma ASA meeting on June 4th 2015 in Santa Rosa, we discussed the potential impact of this regulation to cultivators. The major concerns for them were:

1. Mandatory State Registry Should not be required for individuals or small collectives
2. Having a permit that is only for cultivators would make this an easy target for future raids or federal interference. Our current state id card is voluntary, and has a system in place to protect anonymity of patients as these medical records are protected by HIPPA laws.

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3. A large-scale agricultural permit may be necessary to protect watersheds; this should apply to any cultivation of any plant based on garden size (canopy). Cultivators are willing to participate in best practices and reasonable programs. It is unreasonable to cannot create a program stricter than most agricultural standards, as many of these cultivators have medical and physical conditions to be qualified for cannabis use.

This draft order includes regulation that falls beyond water use or waste.

Limiting these "operations (so they) cannot occur 250 feet from schools, state or federal parks and military bases," does not affect our water system. (Page 22, J)

Road Grading and inspections of other land upgrades are triggered by cultivation of your personal supply of medicine rather than applying for construction permits.

Fallen tree leaves that compost naturally (without human interference) have very little difference in composition and breakdown than "dead or harvested plant waste"

There is conflicting information from water board members, on if the canopy includes the area of all cultivation as opposed to just cannabis cultivation. If cannabis farmers are the only ones required to participate in this program, it does not make sense to have other types of goods farmed counted towards 2000 square feet, since this does not apply to them if cannabis was not onsite.

We look forward to improvements as this draft ordinance is developed,

Sonoma Chapter of ASA
C/o Arlene Francis Center
99 West 6th Street
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Chapter Chair: sarah@safeaccessnow.org

Salmonid Restoration Federation

Re: Comments on Draft Order R1-2015-0023, Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region

Dear Mr. St John,

The following comments are offered on behalf of Salmonid Restoration Federation (SRF), a statewide non-profit organization that promotes restoration and recovery of California's wild salmon populations. SRF is a membership based organization with constituents in the watershed restoration field as well as agency representatives who are mandated to uphold public trust values. Although our scope of work is statewide, we are based on the North Coast which is the epicenter of both the watershed restoration field and the marijuana industry.

SRF was one of the initial groups to petition for listing of coho salmon in California and in recent years, we have focused on coho salmon recovery efforts and water conservation. As you know, coho are more sensitive to high water temperatures than other salmonid species and throughout their range they suffer from loss of habitat and insufficient instream flows.

SRF has undertaken a water conservation program to improve flow conditions in North Coast watersheds where marijuana cultivation is a primary land use. SRF appreciates the North Coast Regional Water Quality Control Board taking a proactive approach to the complex problems of unregulated marijuana cultivation in North Coast watersheds.

These watersheds suffer from the legacy impacts of decades of logging, road building, and other resource extractive industries. The Eel River also has highly erosive soils and suffers from excessive sediment loading that impacts water quality. The patchwork of private land ownership in this region and extensive marijuana cultivation compounds the legacy problems of impaired water quality and dwindling fisheries resources. These watersheds suffer from cumulative impacts, and marijuana cultivation is one of the many factors contributing to sediment delivery and impaired flows.

The Draft Order is a good first step in outlining what a water quality regulatory structure could look like that addresses the adverse impacts to water resources associated with marijuana cultivation on private land. Although we believe that landowners should be "responsible for discharges of waste and water resource impacts from recent site development," (Draft Order, page 2) we are concerned that it would be unrealistic to hold current landowners responsible for waste discharges from "past or legacy development / features."

Historic land use practices on the North Coast included unregulated logging, ranching, and mining. After the logging boom, parcels were sub-divided and settled by back-to-the-land homesteaders. Old logging

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roads that were intended for short-term timber production are now used regularly by hundreds of residents in virtually each tributary on the North Coast. Rural landowners already absorb the costs of road maintenance, developing and managing water on their land, and mitigating the impacts of timber companies that historically were not held accountable for their activities or waste discharges. Living rurally is an expensive enterprise and if individual landowners are expected to address past legacy impacts, the NCRWQCB and other state and federal agencies would ideally provide technical assistance or community grant programs that would encourage landowners to form tributary associations (voluntary groups of citizens that could work together towards land stewardship objectives) that could collectively address legacy impacts and current waste discharges.

SRF appreciates that the implementation of the order could address sediment and temperature impairments by requiring the application of Best Management Practices, protection of riparian conditions, remediation of sediment delivery sites, water conservation measures, and education and outreach. However, we are concerned about the mechanisms of implementation. For example, is this tiered approach to compliance voluntary or will it be driven by enforcement sweeps and the threat of fines? Will landowners who voluntarily comply be at risk of prosecution for activities on their land? These are the common concerns that we hear from rural landowners.

It would be helpful if the tiered approach included incentives to encourage Best Management Practices and voluntary compliance. Many residents are already engaged land stewards and have made substantial investments on their own land in order to preserve flows for salmon and other aquatic species. Based on SRF's extensive outreach in the Redwood Creek watershed that borders the Mattole River and flows into the South Fork of the Eel River, we believe that many landowners would qualify for Tier 1 in that their activities pose a low-risk to water quality and that their operations are less than 2,000 square feet and at least 200 feet from surface water (wetland, class I, II, or III stream). However, the Tier 1 requirement that dischargers do not directly divert surface water from May 15 through October 31 seems unrealistic and nearly impossible to enforce.

SRF has been promoting the concept of "voluntary forbearance" in which landowners calculate their water budget based on the Water Board's formula for calculating water needs for small domestic use. SRF encourages landowners to understand their water needs and plan accordingly in order to voluntarily forbear during the dry summer months. CDFW's criteria for forbearance under the Emergency Tank Registration Program is 60 days. Requiring a five month period of forbearance would require that most landowners who are already forbearing during the summer months, double their water storage which for many would require additional grading. Although SRF strongly supports having enough water storage to forbear for at least 60 days (and preferably 90 to 120 days) we are concerned that the five-month period recommended in the draft order would be cost-prohibitive and therefore deter prohibit landowners to comply with the program who would otherwise meet the Tier 1 criteria.

SRF thinks that it is prudent to utilize third party programs, but it will be imperative that third party consultants be trained to conduct site inspections and prioritize Best Management Practices and compliance requirements instead of regarding the program as a "branding" opportunity for growers as California advances towards legalization. With due respect for the NCRWQCB's sincere efforts, it is hard to imagine that landowners who are not currently employing Best Management Practices would come into regulatory compliance unless the Draft Order is in tandem with legalization and becomes a county or state requirement for individuals to legally cultivate marijuana.

This program may benefit from a more coordinated "stick and carrot" approach. Thus far, the most egregious grows that threaten water quality, fisheries, and sedimentation have not been rigorously enforced or prosecuted. Simultaneously, there have not been many incentives for landowners to come into compliance at the risk of both livlihood and privacy. Our experience has been that many landowners want to do the right thing and that the climate of prohibition is both lucrative and challenging for an industry that has not yet conformed to legal or environmental standards.

Another byproduct of marijuana cultivation is the use and abuse of water trucks that are diverting water from one watershed to transport to grow operations that have run out of water or have insufficient storage. The use of water delivery trucks during the driest time of the year contributes to sediment displacement, dust dispersal, and taxes road systems that are already poorly maintained. The State Water Resources Control Board requires a permit for "out of basin" water transfers yet according to the California Department of Fish and Wildlife, water truck diversions are often unpermitted and difficult to monitor and enforce. Last year, a convicted industrial grower pumped 200,000 gallons from the South Fork Eel River and sold that water within a month before regulatory agencies took action. He now has secured a permit in this historic low-flow year to sell water to landowners who have not planned sufficiently to weather this extended drought. When the regulatory agencies entrusted to uphold water quality standards and fisheries resources do not enforce on the most blatant and egregious violations, it is hard for good land stewards to see the value of voluntary compliance.

SRF appreciates the Best Management Practices appendix in that it is reasonable and provides a helpful outline for landowners who are trying to minimize adverse impacts. However, the General BMP recommendation to mitigate for removed trees by replanting at a 3:1 ratio may be appropriate for riparian corridors but is not necessarily appropriate in many upslope North Coast watersheds. Second and third-growth Douglas fir stands utilize significantly more water than old-growth forests. According to the Forest Service study, "Logging Effects on Streamflow: Water Yield and Summer Low Flows at Caspar Creek in Northwestern California," selectively thinning even-aged stands can reduce evotranspiration, greatly increase streamflows, and help retain soil moisture. Site specific forest management can actually improve streamflows and replanting requirements should be site specific rather than a general mandate.

SRF's primary concern is for fisheries recovery, watershed health, and community-based water conservation efforts. Ideally, this pilot program can offer both incentives and a realistic approach to enforcement and compliance by providing technical assistance and grant funding for tributary associations that can coordinate water conservation and implementation efforts.

Thank you for your proactive approach to this issue and your efforts to hear from rural communities as you develop this regulatory framework to address water quality, sedimentation, and waste discharges that impact salmon and flows.

For wild salmon,

Dana Stolzman
Executive Director

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June 8, 2015

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northcoast@waterboards.ca.gov

Re: Draft Order R1-2015-0023, Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects

Members of the Board:

The following comments are submitted on behalf of the organizations Trout Unlimited, CalTrout, and the Nature Conservancy, who are collaborating on North Coast anadromous fish conservation as the California Salmon and Steelhead Partnership. Our partnership is focused on improving the water quality, streamflow, and habitat that imperiled coho salmon and steelhead need to survive, through a combination of scientific research, on-the-ground conservation, and development of improved policy.

Background

In recent years, marijuana cultivation has emerged as arguably the primary threat to salmon and steelhead on the North Coast. Due to changes in market conditions, social attitudes, and drug policy, the number and scale of marijuana grow operations has increased dramatically across the area, particularly over the past decade. While the aggregate size of these operations is probably not large compared to other agriculture in terms of disturbed acres, their effects are profound due to the sheer number of operations and their widespread distribution across the low-order watersheds that are crucial to salmon and steelhead spawning and summer survival of juvenile fish. Marijuana operations discharge sediment from poorly constructed roads and other development, particularly on steep slopes, and from practices such as disposal of spent soils. They discharge nutrients and other pollution from poorly handled fertilizers, herbicides, and other chemicals. And they compound the severity of all these impacts by drawing irrigation water throughout the long dry season, which also raises water temperatures and in many cases causes headwaters streams to go dry. Each of these impacts is further compounded by the unregulated nature of marijuana cultivation and the general hostility of many growers to agency scrutiny – both of which are largely the result of the crop's quasi-legal status.

We strongly support the development and implementation of a WDR order as one element of a strategy to address the impacts of marijuana cultivation. A permitting system alone will not be sufficient to adequately address the water quality impacts of the industry in the foreseeable future, because a large segment of the industry simply will not consent to regulation, either because of traditional attitudes or because their operations are associated with the illegal black market. But it makes sense to identify and work with operators who are willing to comply with water quality laws – both as a means of reducing their impacts directly, and also of reducing the

number of operations that will inevitably have to be dealt with via involuntary civil and criminal enforcement.

Specific Comments

With the above background, we offer the following comments on specific elements of the draft WDR.

Parameters for Tiers 1, 2, and 3 (Finding # 17)

We support the approach of dividing operations into tiers that receive differing levels of oversight depending on their potential to impact water quality. In particular, Tier I status can both target enforcement resources away from low-impact operations as well as provide important incentives for growers to limit the size of operations and adopt low-impact management practices.

With respect to defining Tier I, 2,000 square feet appears to be a reasonable threshold for operations. However, such an area of cultivation will require as much as 1,000 gallons of water per day of irrigation later in the season, when plants are largest and streamflows lowest – enough to have measurable impacts in small watersheds. We would oppose any suggestion to raise this threshold – particularly for reasons related to economics or other factors not directly tied to water quality.

We likewise support a seasonal no-diversion period as a requirement for Tier 1 status. The May 15- Oct. 31 period is certainly protective of dry season flows; however, it may be longer than necessary and could raise practical concerns in some cases. We would support a period of June 15 – October 31, which might result in more widespread compliance with Tier 1 standards. Regardless of the season, however, the seasonal no-diversion requirement should apply not only to direct diversion from surface water, but also diversion from alluvial groundwater, which in most cases is connected to surface water in North Coast geologies.

Third Party Certification Programs (Finding #21)

We acknowledge that, given the quasi-legal status of marijuana, a third-party certification program could reduce the reluctance of many growers to participate in regulatory programs, as described above. However, to the extent such a program allows growers to conceal their identities and/or locations of their operations from the agencies, such an approach represents a radical departure from existing compliance programs. The draft order does not provide many details on how the Board will certify third-party programs and monitor their effectiveness at obtaining compliance and protecting water quality. We urge the Board to use caution in implementing this approach, and that it take steps to monitor its effectiveness and remedy problems where necessary.

Section A.5, General Conditions, Water Storage and Use

We strongly support the inclusion of provisions in the WDR addressing water use, as well as the timing and magnitude of water diversion. While direct regulation of water rights and water diversion are primarily within the purview of the State Water Board and the Department of Fish and Wildlife, the Board does have authority to regulate diversion to the extent it affects water

quality. Given the small size of many headwaters streams during the height of the growing season, and the critical importance of these streams to salmon and steelhead, even small diversions from streams or tributary streams and alluvial groundwater can have severe effects on water quality. We offer the following comments on specific sections of the WDR governing diversion:

- **Section 5(a):** We support the requirement that the impacts of water use be considered in conjunction with other water use in the planning watershed. Cumulative diversion by multiple users is an essential consideration in addressing water quality impacts.
- **Section 5(c):** We support limiting the requirement that Tier 2 dischargers install storage to situations where it is "possible." However, this requirement should be strengthened. Whenever possible, dischargers should be required to eliminate (not merely reduce) diversion for the entire dry season (May 15 – October 15), and not just during "low-flow periods."
- **Section 5(e):** The "should" should be replaced with "must." Documentation of a valid water right should be a mandatory requirement for all operations. This documentation would consist of a Statement of Diversion and Use (for riparian rights),and/or a license, permit, or registration (for appropriative rights).

Section B.7 (Tier II Water Resource Protection Plans, Water Use):

- In addition to requiring "relevant water right documentation," operators should also be require to document compliance with Fish and Game Code §§1600 et seq., which govern substantial diversion of water.
- Operations should be required to install metering devices to measure diversions, and to document the beginning and ending dates of seasonal diversion, e.g., with date-stamped photographs of meter readings.
- The concept of establishing conditions under which it will be presumed water use does not affect water quality is a good one. An additional approach could be to presume "no impact" if the operator has entered a valid Lake/Streambed Alteration Agreement (LSAA) with DFW following a site visit and the creation of site-specific terms and conditions.

Thank you for your consideration of the above comments.

Sincerely,

Matt Clifford	Darren Mireau	Nancy A. Smith
Staff Attorney	North Coast Regional Manager	North Coast Project Director
Trout Unlimited	CalTrout	The Nature Conservancy