CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2015-0520

CHRISTOPHER CORDES, EDDIE AXNER CONSTRUCTION, INC., AND EDDIE AXNER
ASSESSOR PARCEL 041-300-035
SHASTA COUNTY

EDDIE AXNER CONSTRUCTION, INC. AND EDDIE AXNER'S EVIDENCE LIST FOR JUNE 4/5 2014 HEARING

1. Exhibit 1: Strategy – Regulation and Enforcement of Unauthorized Diversions; Discharge of Waste to Surface and Groundwater Caused by Marijuana Cultivation

2. Exhibit 2: Photographs of Erosion Control Measure Installed by Axner At Time of Project Work

3. Exhibit 3: Photographs of Subsequent Erosion Control Measure in Current Condition

4. Exhibit 4: California Water Quality Board Storm Water Program FAQ

5. Exhibit 5: Exhibits 1 through 58 Previously Filed by Prosecution Team

STRATEGY

REGULATION AND ENFORCEMENT OF UNAUTHORIZED DIVERSIONS; DISCHARGES OF WASTE TO SURFACE AND GROUNDWATER CAUSED BY MARIJUANA CULTIVATION

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

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Attachment A Olson Memo, Regulation of Waste Discharges from Marijuana Cultivation

Attachment B Washington Fish and Wildlife, Gold and Fish Pamphlet

Attachment C Department of Fish and Wildlife, Draft Rapid Assessment of Watershed Impacts

Attachment D CDAA, 2012 Environmental Crimes Associated with Cultivation of Cannibis

Attachment E Water Board and California Department of Fish and Wildlife, Field Guide for Coordinated Enforcement Response

Attachment F Water Board Fact Sheet and Communication Plan

Attachment G Pertinent Water Board and California Department of Fish and Wildlife Boundary Maps

1 BACKGROUND

On 7 May 2013, Bill Connelly, Butte County Board of Supervisors Chair, sent a letter to Karl Longley, Central Valley Water Board Chair expressing his concerns about the environmental damage caused by marijuana cultivation in Butte County and requested the Central Valley Water Board's assistance in addressing these matters. Since then, Butte County's concerns regarding marijuana cultivation have caught the attention of Shasta and Tehama Counties as well as Assemblymen Logue, Chesbro, and Ammiano, Senator Nielson, and the Governor's office.

Central Valley Regional Water Quality Control Board (Central Valley Water Board) staff has since partnered with the State Water Resources Control Board (State Water Board) and North Coast Regional Water Quality Control Board (North Coast Water Board) staff and is working closely with the California Department of Fish and Wildlife (CDFW), California Department of Forestry and Fire Protection (CalFire), and local law enforcement officials to develop protocols to safely participate in the coordinated regulation and enforcement of discharges of waste to surface and groundwater, and illegal diversions of surface water associated with marijuana cultivation.

CDFW recognizes marijuana cultivation operations on private and public lands cause enormous adverse effects to wildlife and their habitat. Marijuana cultivation site preparation activities can cause erosion and stream habitat degradation. Unlawful water diversions by those cultivating marijuana can severely limit the amount of water available to the public and wildlife. Fertilizers and pesticides used in these sites are often mixed directly in the water source thus contaminating streams. In January 2013, CDFW's Law Enforcement Division (LED) started a pilot program of wildlife officers focused primarily on marijuana enforcement. Based on the success of the pilot program and need for future development in this area, CDFW's LED created a Marijuana Enforcement Team.

This document describes the multi-agency strategy for regulation and enforcement of marijuana cultivators.

2 DEVELOPMENT SUMMARY

On 7 May 2013, Chairman Bill Connelly of the Butte County Board of Supervisors wrote the Central Valley Water Board requesting assistance to "enforce the Clean Water Act" and requested an explanation of "the Central Valley Water Board's position to not fully regulate the State Construction Storm Water Permit regulations on construction sites that disturb over an acre of soil or the State Industrial Storm Water Permit regulations for ongoing marijuana operations [in Butte County]".

On 28 May 2013, Water Board staff responded to Mr. Connelly in writing. Staff cited the difficulty in determining a legal Proposition 215 grow vs. an illegal one, the inherent dangers associated with grow operations, and the fact that our staff are not trained peace officers and as such do not have the requisite training to deal with the myriad of potential issues associated with these operations. Staff did, however, offer in-house technical expertise to those inspecting such facilities.

On 19 July 2013, Central Valley Water Board Executive Officer Ms. Pamela Creedon received a letter from Assemblyman Dan Logue on behalf of the Butte County Board of Supervisors. Mr. Logue represents District 3; Tehama, Butte, Colusa, Sutter, and Yuba Counties. Mr. Logue reiterated the importance of Water Board involvement in regulating marijuana operations and likened these facilities to those of farming and timber industries.

On 6 August 2013, Water Board staff and Jennifer Lester Moffitt, Central Valley Water Board's Vice Chair, met in Butte County with Assemblyman Logue, Senator Nielsen, and Butte County representatives. The

meeting was arranged by Assemblyman Logue to discuss the Central Valley Water Board's position regarding staff's active participation in marijuana enforcement activities.

The following day, Water Board staff met at the State Capitol with Assemblyman Dan Logue, Butte County representatives, and the Governor's office. The purpose of this meeting was to elevate the County's concerns regarding the Central Valley Water Board's position. It was determined through this meeting that while Butte County does have legitimate concerns, further discussion was warranted before Central Valley Water Board staff would actively participate in marijuana enforcement.

On 22 August 2013, Water Board staff developed a *Strategic Plan Outline for the Regulation and Enforcement of Marijuana Cultivators*. The Outline discussed the Water Board's goals and objectives of the Statewide Task Force, and other immediate and long term needs.

On 23 August, State Water Board's Executive Officer Tom Howard sent a memorandum, *State Water Board Taking Active Role in Marijuana Task Force,* to Water Board Executive Officers. The memorandum provides an overview of the issues associated with marijuana and assigns Cris Carrigan, Director of the State Water Board's Office of Enforcement as the "lead in coordinating on behalf of the Water Boards with other local, state, and federal government officials".

On 27 August 2013, Karl Longley received a letter from Shasta County Board of Supervisors. This letter echoed Butte County's concerns. Staff responded to Shasta County on behalf of Chair Longley in a letter dated August 27.

On 4 September 2013, State Water Board and Central Valley Water Board staff met at the State Capitol for the first formal Statewide Task Force meeting. Those present included the Governor's office, Assemblyman Dan Logue, Assemblyman Wesley Chesbro, CalFire, CDFW, and local law enforcement officials. The purpose of the meeting was to reiterate the goals of the Statewide Task Force and further develop a list of key participants. The Statewide Task Force has not reconvened since.

On 23 September 2013, the Water Boards held the first Multi-Agency Marijuana Working Group meeting.

On 4 October 2013, staff provided an Informational Item on the development of a marijuana program to the Central Valley Water Board during a regularly scheduled Board meeting.

Also in October 2013 Water Board and CDFW staff began working with Formation Environmental and VESTRA Resources, Inc. to explore technology options to identify, assess, and target key watersheds impacted by marijuana cultivation.

On 1 November 2013, Water Board and CDFW staff held the second Multi-Agency Marijuana Working Group meeting. The meeting was well attended by multiple County and State agencies and law enforcement personnel.

On 25 November 2013, Water Board and CDFW submitted a joint Budget Change Proposal (BCP), "Reducing Environmental Damage Caused by Marijuana Cultivation." Details of the BCP are described in Section 3, Resource Discussion below.

By the end of November 2013, Formation Environmental and VESTRA Resources had developed a prototype Cannabis Identification and Prioritization System (CIPS). CIPS uses a GIS platform and remote sensing technology to identify, assess, and target key watersheds impacted by marijuana cultivation. The system was demonstrated on three watersheds in the North Coast Region and one watershed in the Central Valley Region.

On 20 December 2013, CDFW's LED created the Marijuana Enforcement Team (MET). The purpose of the MET is to provide specially trained law enforcement personnel who are able to coordinate eradication and reclamation efforts primarily targeting trespass marijuana grows causing damage to environmentally

sensitive areas. The MET was also created to assist with site and civilian staff security of private property marijuana grows.

On 30 January 2014, Water Board and CDFW staff held the third Multi-Agency Marijuana Working Group meeting. The meeting was well attended by multiple County and State agencies, law enforcement personnel, and legislative representatives from Asm. Logue's office, Senator Nielsen's office, Congressman Doug LaMalfa's office, and other interested parties. The purpose of the meeting was to vet the general framework of the overarching strategic plan.

On 14 March 2014, Water Board and CDFW staff held a meeting with the Nature Conservancy, CalTrout, and Trout Unlimited at Cal EPA headquarters in Sacramento. The meeting was requested by the third parties to inform them of our work on the subject and for them to express their concerns regarding the environmental damage associated with marijuana cultivation.

On 15 and 16 May 2014, the Central Valley Water Board held a Workshop in Redding on Mining, Marijuana, and Timber. As part of the Workshop, Water Board and CDFW staff provided an aerial tour of marijuana cultivation sites via helicopter to Board Members and Cal EPA officials. The following day on 16 May, staff provided a formal discussion of the problems associated with marijuana cultivation, options to regulate discharges associated with cultivation sites, enforcement options, and an overview of this strategy. Board Members were pleased with the approach Water Board and CDFW staffs proposed.

As the timeline above suggests, this Plan primarily represents the result of efforts by staff of the Central Valley Regional Water Board over the past year to add regulatory oversight of discharges of waste associated with marijuana cultivation to their overall regional water quality protection program, as well as efforts by the State Water Board and CDFW to develop a formal strategy to ensure statewide consistency. This Plan incorporates and, where applicable, discusses differences in, the approach being taken by the North Coast Regional Water Quality Control Board and CDFW Northern Region, whose regional regulatory and enforcement effort associated with waste discharges from marijuana cultivation sites has been underway and evolving over several years. This document is not intended to be a comprehensive summary of all of the elements of the North Coast's approach to addressing the water resource and water quality impacts from marijuana cultivation activities in the North Coast.

3 RESOURCE DISCUSSION

On 25 November 2013, the State Water Board and CDFW submitted a BCP, *Reducing Environmental Damage Caused by Marijuana Cultivation*. As outlined in the BCP's Proposal Summary, "the Department requested 18 positions and Water Board requested 11 positions to implement a task force and priority driven approach to address the natural resources damages from marijuana cultivation, primarily on private lands in northern California, but also in targeted partnerships on high conservation value state public lands. There are four elements to the proposed program: permitting, enforcement, education and outreach, and coordination with other agencies. The lessons learned through this task force can also be incorporated into the administration's efforts to design, build, and implement a larger, more comprehensive program to address the environmental harm from marijuana. This initial effort will be focused in the geographic area where the two agencies see the greatest need…" The BCP was modified to reduce the number of CDFW positions to 7, and then became part of the Governor's proposed budget, which was approved by the Legislature on June 20, 2014. The Budget allocates $1.8 million from the Waste Discharge Permit Fund to fund the 11 Water Board positions with direction "to improve the prevention of illegal stream diversions, discharges of pollutants into waterways, and other water quality impacts associated with marijuana production." Fish and Wildlife is given direction "to investigate and enforce violations of illegal streambed alterations and the Endangered Species Act associated with marijuana production." The Budget further provides that it is intended that the Water Boards and Department of Fish and Wildlife will coordinate these efforts.

4 AUTHORITY

4.1 Water Board

Any person who discharges wastes in the State of California that could affect the quality of waters of the state has the legal obligation to file a report of that discharge with a Regional Water Quality Control Board, unless the Board specifically waives that requirement.[1] "Waters of the state" include both surface waters and groundwater. Upon receiving the report of the discharge, the Board has a non-delegable duty to prescribe requirements that will ensure that the discharge will comply with the applicable water quality control plan and will not result in pollution or nuisance.[2] These requirements make it impossible for the Water Boards to turn a blind eye towards discharges from marijuana cultivation sites, because they have extensive evidence demonstrating that these discharges can and do affect the quality of waters of the state.

Legal ambiguities related to the cultivation and possession of marijuana have little bearing on the Water Boards' regulatory authority; the Boards have the authority to enforce water quality laws despite the discontinuity between California law, which legalizes the medical use of marijuana,[3] and the federal Controlled Substances Act, which prohibits the possession of marijuana even for medical uses.[4] The Water Boards' authority remains intact because although federal law criminalizes the cultivation and possession of marijuana, federal law does not preempt the Boards' regulatory authority with respect to the water quality-related aspects of marijuana cultivation.[5] However, in order to avoid any conflict with federal law, when the Water Boards exercises their regulatory authority over marijuana cultivators, it will explicitly state that it does not in any way authorize, endorse, sanction, permit or approve the cultivation, use, or sale of marijuana or any other illegal activity.

On 19 August 2013, the *State Water Board's Office of Chief Counsel* prepared a memorandum, *Regulation of Waste Discharges from Marijuana Cultivation*. This memorandum is included as Attachment A.

In addition to its authority to regulate discharges of wastes, Water Boards have enforcement authority over unauthorized discharges of waste, and discharges of waste that violate water quality control plans. Water Boards may issue cleanup and abatement orders under Water Code section 13304 for discharges or threatened discharges, and impose administrative civil liabilities under Water Code section 13350 and 13375, or refer matters to the Office of Attorney General for prosecution. This list is not intended to be comprehensive.

4.2 Department of Fish and Wildlife

As the trustee agency for the public's fish and wildlife, CDFW has jurisdiction over the conservation, protection, and management of California's fish, wildlife, native plants, and habitats necessary for biologically sustainable populations of those species.[6] This includes authority over water quality protection as it relates to fish and wildlife. CDFW's management functions are implemented through the

[1] Wat. Code, § 13260.
[2] Wat. Code, § 13263.
[3] The Compassionate Use Act of 1996, codified at Health & Saf. Code, § 11362.5.
[4] See 21 U.S.C. §§ 812, 844(a); *Gonzales v. Raich* (2005) 545 U.S. 1, 26–29; *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, 491–495.
[5] See *Qualified Patients Ass'n v. City of Anaheim* (2010) 187 Cal.App.4th 734, in which the Court found that Congress did not intend to preempt of state laws concerning controlled substances.
[6] Fish & G. Code, § 1802.

administration and enforcement of the Fish and Game Code.[7] With respect to enforcement against unauthorized water diversions and discharges from marijuana cultivation sites, relevant sections of the Fish and Game Code include, but are not limited to, section 1602, which requires an entity to notify CDFW of any proposed activity that may substantially modify a river, stream, or lake, section 5650, which prohibits the unlawful deposit of any substance or material deleterious to fish, plant life, mammals, or bird life into waters of the state, section 5652, which prohibits the disposal of trash into waters of the state, and section 2080, which prohibits the unlawful take of state-listed endangered and threatened species.

Upon investigation by CDFW, a criminal or civil action can be brought by the Attorney General or district attorney for violation of the Fish and Game Code. Pursuant to Fish and Game Code section 1615, a person found to have violated section 1602 is subject to a civil penalty of not more than $ 25,000. Fish and Game Code section 12025(a) provides that, in addition to any penalties provided by any other law, a person found to have violated section 1602, 5650, or 5652 in connection with the production or cultivation of a controlled substance (i.e., marijuana) in lands under management of specified state or federal government agencies[8] is subject to a civil penalty in the following amounts: up to $10,000 for violation of section 1602, up to $40,000 for violation of section 5650, and up to $40,000 for violation of section 5652.

On June 20, 2014, the Governor signed AB 861, a trailer bill to the Governor's proposed budget, which amends Fish and Game Code section 12025 as follows. First, AB 861 amends section 12025(a) to also impose civil penalties on a person found to have violated section 1602, 5650, or 5652 "while trespassing on other public or private land in connection with the production or cultivation of a controlled substance."

Second, AB 861 amends Fish and Game Code section 12025 to impose civil penalties on a person found to have violated section 1602, 5650, or 5652 when the production or cultivation of a controlled substance does not involve trespass on public or private land. Specifically, AB 861 adds section 12025(b)(1) which states that, "[i]n addition to any penalties provided by any other law, a person found to have violated section 1602, 5650, or 5652 in connection with the production or cultivation of a controlled substance on land that the persons owns, leases, or otherwise uses or occupies with consent of the landowner may be liable for a civil penalty in the following amounts:" up to $8,000 for violation of section 1602, up to $20,000 for violation of section 5650, and up to $20,000 for violation of section 5652. Furthermore, AB 861 adds section 12025(b)(2) which provides that "[e]ach day that a violation of section 1602, 5650, or 5652 described in this subdivision occurs or continues to occur shall constitute a separate violation."

Last, AB 861 amends Fish and Game Code section 12025 to grant CDFW authority to administratively impose penalties on a person found to have violated section 1602, 5650, or 5652. Specifically, AB 861 adds section 12025(e) which provides administrative authority to CDFW's chief deputy director or law enforcement division assistant chief in charge of marijuana enforcement to serve a complaint on any person or entity on which an administrative penalty may be imposed and requires that the Director hold a hearing if requested.

5 LIMITATIONS

Enforcement and prosecution efforts will focus on grows that purport to be legal under the Compassionate Use Act (Proposition 215), and trespass grows on state-owned or managed public lands. Staff will not inspect or otherwise participate in the regulation of grows located on federally owned lands unless specifically requested by a Federal agency. When requested, Water Board and CDFW staffs would provide a supporting role in the form of professional consultation or expert testimony.

[7] Fish & G. Code, § 702.

[8] These agencies include the Department of Parks and Recreation, CDFW, the Department of Forestry and Fire Protection, the State Lands Commission, regional park districts, the United States Forest Service, and the Bureau of Land Management.

Staff safety is one of the Water Boards' and CDFW's highest priorities. Water Board staff will not participate in inspections or enforcement actions associated with known cartels or gangs engaged in illegal trespass grows, and will rely on CDFW's Law Enforcement Division (LED) and County and State Law Enforcement to secure sites and make sure they are safe before entry is made at any marijuana grow site.

6 ROLES AND RESPONSIBILITIES

Proposed roles and responsibilities for the development and implementation of this Program are summarized below.

6.1 Lead Assignments

State Water Board Lead		
Cris Carrigan	Director	State Water Board, Office of Enforcement
Central Valley Water Board Leads		
Clint Snyder	Assistant Executive Officer	Central Valley Water Board
Patrick Pulupa	Senior Staff Counsel	State Water Board, Office of Chief Counsel
North Coast Water Board Leads		
Matt St. John	Executive Officer	North Coast Water Board
David Leland	Assistant Executive Officer	North Coast Water Board
Diana Henrioulle	Enforcement Coordinator	North Coast Water Board
Samantha Olson	Senior Staff Counsel	State Water Board, Office of Chief Counsel
California Department of Fish and Wildlife, Law Enforcement Division Leads		
Brian Naslund	Assistant Chief - MET	Department of Fish and Wildlife
Nathaniel Arnold	Captain - MET	Department of Fish and Wildlife
Linda Barrera	Staff Counsel	Department of Fish and Wildlife

Cris Carrigan serves as the State Water Board's lead on the regulation and enforcement of marijuana. Clint Snyder and Patrick Pulupa work closely with Mr. Carrigan to facilitate these efforts for the Central Valley Water Board. Matt St. John, David Leland, Diana Henrioulle and Samantha Olson work closely with Mr. Carrigan to facilitate these efforts for the North Coast Water Board.

Clint Snyder is the Central Valley Water Board's lead on marijuana program development and Matt St. John is the North Coast Water Board's lead on marijuana program development. Patrick Pulupa and Samantha Olson, Senior Staff Counsels with the Office of Chief Counsel serve as assigned legal counsel working closely with Mr. Snyder and Mr. St. John to develop the program. Mr. Snyder and Mr. Pulupa coordinate efforts with the Central Valley Water Board's Executive Oversight Committee, and Ms. Olson and Mr. St. John do so in the North Coast.

Assistant Chief Brian Naslund and Captain Nathaniel Arnold serve as CDFW, Law Enforcement Division, Marijuana Enforcement Team leads on the regulation and coordinated enforcement effort concerning marijuana. Linda Barrera serves as CDFW's legal representative on investigations and efforts to administratively impose penalties associated to marijuana cultivation, and coordinates efforts with local, state, and federal agencies to prosecute cases related to marijuana cultivation in state and federal courts.

6.3 Executive Oversight Committee

Matt St. John	Executive Officer	North Coast Water Board
Samantha Olson	Senior Staff Counsel	North Coast Water Board
Pamela Creedon	Executive Officer	Central Valley Water Board
Patrick Pulupa	Senior Staff Counsel	State Water Board, Office of Chief Counsel

Clint Snyder	Assistant Executive Officer	Central Valley Water board
Cris Carrigan	Director	State Water Board, Office of Enforcement
Rob Egel	Director	State Water Board, Office of Legislation
George Kostyrko	Director	State Water Board, Office of Public Affairs
Susan LaGrande	Deputy Director, Legislation	Department of Fish and Wildlife
Neil Manji	Northern Regional Manager (Reg. 1)	Department of Fish and Wildlife
Tina Bartlett	North Central Reg. Manager (Reg. 2)	Department of Fish and Wildlife
Brian Naslund	Assistant Chief - MET	Department of Fish and Wildlife
Linda Barrera	Staff Counsel	Department of Fish and Wildlife

The purpose of the Executive Oversight Committee is to relay pertinent information and provide updates to appropriate Executive Managers and Board Members within the Water Boards and CDFW and to provide feedback and/or guidance to staff on any of the following:

- Discussions or interactions involving the Governor's office, legislators, CalEPA, Natural Resources Agency, or other high profile interests,
- Policy development,
- Implementation plans,
- Communication Plan,
- Consistency in permitting actions or proposals,
- Consistency in enforcement approaches,
- Resource proposals, and
- Any other considerations that may impact the Central Valley, North Coast, or State Water Boards.

6.4 Interagency Coordination Committee

Coordinated By:	Clint Snyder	Central Valley Water Board
	Lt. DeWayne Little	CA Dept. of Fish and Wildlife
Pamela Creedon	Executive Officer	Central Valley Water Board
Patrick Pulupa	Staff Counsel	State Water Board, Office of Chief Counsel
Cris Carrigan	Director	State Water Board, Office of Enforcement
Robert Egel	Director	State Water Board, Office of Legislation
George Kostyrko	Director	State Water Board, Office of Public Affairs
Matt St. John	Executive Officer	North Coast Water Board
Diana Henrioulle	Senior Enforcement	North Coast Water Board
Stormer Feiler	ES, Enforcement	North Coast Water Board
Neil Manji	Northern Regional Manager (Region 1)	Department of Fish and Wildlife
Tina Bartlett	North Central Regional Manager (Region 2)	Department of Fish and Wildlife
Brian Naslund	Assistant Chief - MET	Department of Fish and Wildlife
Nathaniel Arnold	Captain - MET	Department of Fish and Wildlife
Linda Barrera	Staff Counsel	Department of Fish and Wildlife

The Interagency Coordination Committee (ICC) is made up of Water Board and CDFW staff from each of the key areas thought to be the subject of the Pilot Project as described in the BCP; mainly State Water Board, Central Valley Water Board, North Coast Water Board, CDFW's LED, and CDFW's Regions 1 and 2.

The primary purpose of the ICC is to assure regular coordination and communication among Water Board and CDFW as provided in the BCP and Governor's Proposed Budget. Members of the ICC are responsible for:

1. Developing proposed coordinated implementation strategy consistent with respective agency principals and/or Executive Management direction,
2. Regular communication and participation in the ICC regarding progress of the ramp up and implementation strategy,
3. Developing a Working Group of stakeholders consisting of legislative representatives, state and local regulatory agencies, members of the regulated community, and other interested parties,
4. Facilitating Working Group meetings in such a manner as to relay consistent coordinated messages to members of the Working Group, external parties, and media,
5. Quarterly communication regarding the appropriateness and effectiveness of the final strategy in achieving the goals and objectives of Program, and finally
6. In the event any conflict should arise between Water Board and CDFW staff, the ICC will serve to address those conflicts and provide timely direction to front line management and staff assigned to the Program.

6.5 Working Group

Due to the potential adversarial nature of the parties involved, staff proposes a Working Group be developed in two phases. Phase 1 will bring together legislators, resource agencies, local agencies, and likeminded stakeholders (the regulating community). Phase 2 will incorporate proponents of the marijuana industry (the regulated community). The Working Group forum serves the following purposes:

1. Allows a venue for members of the ICC to inform interested parties of Water Boards and CDFW progress in developing the coordinated effort as outlined in the BCP and the Governor' Budget,
2. Provides confidence to the public through members of the Working Group that the State shares the public's concerns and that we are moving forward to address their concerns,
3. Allows members of the ICC an opportunity to incorporate member comments into any long term regulatory strategy and public outreach programs,
4. Provides a regular forum for Water Boards and CDFW staff to deliver a consolidated voice regarding policy, approaches, and direction.

Thus far, Working Group meetings have been held in the Central Valley Water Board's Redding office, the North Coast Water Board's Santa Rosa Office and the State Water Board's Sacramento office, with participants largely representing interested parties within these and CDFW's Northern and North Central Regions. Current and proposed working group participants are outlined in Table 1.

Table 1 – Current and Proposed Working Group Participants

Coordinated By:	Clint Snyder	Central Valley Water Board
	Diana Henrioulle	North Coast Water Board
	Cris Carrigan	State Water Board Office of Enforcement
	Lt. DeWayne Little	California Dept. of Fish & Wildlife
Current Participants:	Office of Congressman Doug LaMalfa (1st District)[1]	
	Office of Senator Nielsen (4th District)[2]	
	Office of Assemblyman Dan Logue (District3) [3]	
	Office of Assemblyman Wesley Chesbro (District 2) [4]	
	Office of Assemblyman Tom Ammiano (District 17) [5]	
	CalEPA	
	State Water Resources Control Board	
	Office of Enforcement	

	Office of Chief Counsel Central Valley Regional Water Quality Control Board North Coast Regional Water Quality Control Board California Department of Fish and Wildlife California Department of Forestry and Fire Protection California Department of Pesticide Regulation California Department of Water Resources California Department of Justice California District Attorneys Association Butte County Shasta County Tehama County Mendocino County Humboldt County Rural County Representatives of California The Nature Conservancy CalTrout Trout Unlimited California League of Cities
Future Participants	U.S. Fish and Wildlife Service U.S. Department of Food and Agriculture The Department Toxics Substances Control CalRecycle The California Department of Pesticide Regulation Construction Industry Representatives (Builders Exchanges, Earthwork Contractors, etc.) Resource Conservation Districts Bureau of Land Mangagement U.S. Forest Service U.S. EPA *Western Plant Science Association *Small Farmers Association *California NORML (National Organization for the Reform of Marijuana Laws) *California Cannabis Industry Association *Americans for Safe Access *Emerald Growers Association (Formerly Humboldt Growers Association) California Forestry Association California Cattlemen's Association California Farm Bureau Other counties within the Pilot area Other Interested Parties

[1] Cong. LaMalfa: Northeastern California, roughly from Auburn east to Interstate 5 with portions in Water Board Regions 1 and 6.
[2] Sen. Nielsen: North Central California, roughly from Roseville to the Oregon Border with portions in Water Board Regions 1 and 6.
[3] Asm. Logue: Butte, Colusa, Glenn, Sutter, Tehama, and Yuba County
[4] Asm. Chesbro: Del Norte, Humboldt, Mendocino, Sonoma, and Trinity County
[5] Asm. Ammiano: San Francisco
*Cannabis industry representatives

7.0 PROPOSED IMPLEMENTATION PLAN

The Proposed Implementation Plan outlines staffs' proposal, which addresses the requirements outlined in the BCP and other pertinent considerations. These include:

- Permitting and Long Term Funding (*BCP Requirement*)
- Inspections
- Enforcement (*BCP Requirement*)
- Education and Outreach (*BCP Requirement*)
- Coordination with Other Agencies (*BCP Requirement*)
- Cleanup Options
- Health and Safety Plan
- Communication Plan
- Challenges
- Legislative Assistance
- Implementation Schedule

7.1 Permitting and Long Term Funding (*BCP Requirement*)

The two Regional Boards are working to develop permit structures that will provide terms and conditions applicable to marijuana cultivation operations with the objective of developing a self-sustaining, fee-based regulatory program within a reasonable time. The North Coast Water Board expects to have a draft permit prepared for consideration by its Board by early 2015. While still under development, the North Coast Board is considering a general waiver of waste discharge with a tiered structure based on risk to water quality. Staff intends to coordinate the highest risk structure of the waiver with the inspection element described below to the extent possible. The permit will help streamline enforcement for the worst offenders and provide meaningful guidance for dischargers willing to comply with water quality rules.

The Central Valley Water Board is considering an interim approach modeled after the Washington Department of Fish and Wildlife's "Gold and Fish, Rules for Mineral Prospecting and Placer Mining," to be implemented while it develops a more permanent regulatory mechanism. The Washington Department of Fish and Wildlife document serves as a permit and contains applicable laws, policies, BMPs, restrictions, and penalties pertaining to mineral prospecting and placer mining. The Gold and Fish document is included as Attachment B.

CDFW has existing permitting authority under Fish and Game Code section 1602 for activities that substantially modify a river, stream, or lake.[9] Marijuana cultivation activities often cause substantial diversions and changes to the bed, channel, and banks of streams; therefore cultivators engaged in these activities must comply with the existing permitting process. CDFW will continue to use this existing permitting framework to minimize impacts associated with these activities for cultivators who want to comply with existing laws.

[9] Specifically, pursuant to Fish and Game section 1602, an entity may not (1a) substantially divert the natural flow of, or (1b) obstruct the natural flow of, or (1c) substantially change the bed, channel, or bank of, or (1d) use any material from the bed, channel, or bank of, (2) any river, stream, or lake, (3) without first notifying CDFW in the manner prescribed in Fish and Game Code section 1602(a)(1). In addition, an entity may not (1) deposit or dispose of (2) debris, waste, or other material containing crumbled, flaked, or ground pavement (3) where it may pass into the river, stream, or lake, (4) without first notifying CDFW in the manner prescribed in Fish and Game Code section 1602(a)(1). After CDFW receives complete notification, if CDFW determines that the activities may substantially adversely affect an existing fish and wildlife resource, CDFW shall provide a draft lake or streambed alteration agreement (LSA Agreement) to the entity, which includes measures necessary to protect the resources. Fish & G. Code, § 1603. Only after the LSA Agreement is finalized and executed may the entity undertake the agreed upon activities.

7.2 Inspections

Water Board and CDFW staffs have developed the following proposed methodology for conducting coordinated inspections. Please note that this approach assumes that each County would be conducting regular inspections to determine compliance with local ordinances or investigating citizen complaints. Once per month, all agencies within a designated Inspection Unit would meet to prioritize the most egregious complaints using the following proposed procedures. In those counties where the approach discussed here does not replace existing task force case review and joint response[10], or where other circumstances or factors cause a site to represent a significant threat to water quality or beneficial uses, the North Coast Regional Water Board will continue to use its discretion to inspect and take appropriate action on a case by case basis, in parallel with the inspection strategy described here.

7.2.1 Geographic Approach

The Pilot Area has not yet been defined, however based on conversations leading up to and including the BCP, the Pilot Area is assumed to be northern California. Staff has further defined this area as being from the southern Colusa County line east to the Central Valley Water Board boundary, west to the California coast line and north to the Oregon border (hereafter referred to as "Pilot Area"); this was for planning purposes only and would be modified based on further direction.

Given Water Board and CDFW boundaries within the assumed Pilot Area, staff proposes a geographic approach to organizing/facilitating inspections. Given this, the Pilot Area is broken into four main areas, each covered by a designated Inspection Unit; a northern and southern unit within the Central Valley Region and a northern and southern unit with the North Coast Region. Inspection Units are shown on Figure 1.

7.2.2 Identifying Watersheds and Inspection Targets

It is assumed that given the limited resources proposed in the Governor's Budget, the number of interested parties and the number of marijuana grows within the Pilot Area, that simply responding to complaints as they develop will not be an effective manner in which to utilize agency resources. Staff instead proposes a proactive, systematic approach to identifying inspection targets. Staffs have identified three potential approaches to facilitate this process;

1. Rapid Watershed Assessment for Marijuana Cultivation (Currently under CDFW development),
2. Site Specific Threat Matrix
3. Cannabis Identification and Prioritization System

These three approaches are summarized below.

7.2.2.1 Rapid Watershed Assessment for Marijuana Cultivation

The Rapid Watershed Assessment for Marijuana Cultivation (RWAMC) was developed by CDFW staff and is currently in pilot form waiting formal approval. CDFW staff has however begun using the approach to identify high priority targets for potential enforcement efforts. The process begins by screening for high priority watersheds by talking with district fishery biologists about which streams contain the most important fish populations (stable and diverse populations of listed fish species). CDFW's Biogeographic Information and Observation System (BIOS database) is then used to screen for other sensitive species. Finally, staffs screen CDFW's high priority list for watersheds that have marijuana grow sites, but that aren't completely overwhelmed by this activity. In essence, focus on watersheds where staff

[10] Several of the counties in the North Coast Region have existing environmental crimes task forces comprised of representatives from local, State, and/or federal resource protection agencies, which meet regularly or convene periodically to discuss environmental complaints, share cases, identify and organize joint inspections and enforcement response for marijuana and/or non-marijuana-related matters.

could reasonably undertake enforcement action with limited staff resources and with a relatively high likelihood of success. A draft *Rapid Watershed Assessment for Marijuana Cultivation* document is included as Attachment C.

7.2.2.2 Site Specific Threat Matrix

Another approach is to identify site specific targets using a manual calculated approach based on mutually agreed upon prioritization criteria as provided in Table 2 below.

Once confirmed each factor would be assigned a value or relative weight. A simple algorithm considering all factors would then be used to calculate a single value representing overall threat of a grow site to human health and the environment. That value would then be used to rank the site against others to identify monthly inspection targets.

Each Inspection Unit will need to consider economics such as grouping inspections to minimize travel and/or LE Recon efforts; in this case lower priority targets may be lumped in with higher priority targets, particularly if located in remote areas.

Table 2 - Preliminary/Proposed Prioritization Criteria

Threatened Drinking Water Supply	Non-natal Streams
Acres Disturbed	Existing Riparian Corridor
Priority Watershed	Presence of Anadromous Species (listed, etc.)
Chemicals Present/ Release	Current or Recent Site Development
Water Diversions	Wetland Impacts

This list developed by Water Board and CDFW staff. Order of importance has not yet been established.

7.2.2.3 Cannabis Identification and Prioritization System

Watershed by watershed approaches using GIS and available (free) imagery are time-consuming exercises but can be effective with appropriate staff resources. As an alternative, staff has worked with two private consultants to develop a fully functional Cannabis Identification and Prioritization System (CIPS) that significantly reduces staff time. CIPS uses a GIS platform, high resolution photography, and remote sensing technologies to identify marijuana grow sites in oak woodland, riparian, and conifer environments. CIPS identifies all of the grow sites within a watershed, estimates the number of plants at each site, the slope of each grow site, the distance to the nearest watercourse, and the class of the watercourse, and uses this information to calculate overall threat to water quality.

The total number of plants, along with industry fertilizer application rates is used to estimate total nitrogen load to the watershed and the estimated amount of water diverted from surface waters. The system also incorporates change analyses using year 2000 as a baseline to determine total graded area in a watershed and changes to the watershed every two years following. This allows the user to quantify impacts, evaluate trends (e.g., magnitude of development within a watershed, increasing or decreasing grows, etc.) and allows Water Board and CDFW staff the ability to quantify our efforts in reducing threat in a watershed through this joint effort. Rough cost estimates for the CIPS are provided in Table 3 below.

Table 3 – Preliminary Cost Estimates, Cannabis Identification and Prioritization System

Regional Board	Size (Sq Km)	Identification / Baseline Classification (2012 NAIP)[1]	Prioritized / Focus Hotspot 2014[2]	GIS Results Comm. & Web Viewer[3]	Total
North Coast	50,357	$248,000	$200,000	$64,000	**$512,000**
San Francisco Bay	11,707	$56,000	$48,000	$16,000	**$120,000**
Central Coast	29,768	$152,000	$120,000	$32,000	**$304,000**
Central Valley (Minus 5R region)	153,701	$432,000	$346,500	$103,500	**$882,000**
Lahontan	84,931	$318,000	$252,000	$78,000	**$648,000**

Colorado River	51,445	$192,000	$156,000	$48,000	**$396,000**
San Diego	10,054	$60,000	$50,000	$20,000	**$130,000**
Total	**391,963**	**$1,458,000**	**$1,172,500**	**$361,500**	**$2,992,000**

[1] Assumes the use of freely available NAIP imagery (2005 through 2012) for the baseline classification
[2] Assumes collection of new high resolution imagery during the 2014 growing season for hotspot area (25% of the total area)

[3] Assumes the use of existing software, infrastructure, and licensing of ESRI products

7.2.4 Inspection Unit Team Member Assignments

Each Inspection Unit will be made up of, at minimum, CDFW and Water Board staff. County Law Enforcement and other County Department staff (Environmental Health, Code Enforcement, Air Quality, etc) will participate based on resource availability and interest. Prior to conducting any inspection each Unit will identify and assign specific roles for each person conducting the inspection. Such roles might include de confliction of grow site, obtaining photographs, surface and groundwater sampling teams, chemical identification/documentation, water diversion and rates, wildlife assessment (biologist using standard methods to assess wildlife impacts, anadromy, fish kill, ESA, poaching, wetlands, etc.), interviews, illicit grading or other.

It is expected that those conducting inspections will have training and a general knowledge of all potential violations associated with marijuana grows and are expected to be confident in the laws, regulations, policies, and BMPs regarding their Unit assignment as it pertains to the inspection. It is expected that each team member will prepare for and complete their assignment by obtaining required equipment and assuring any such equipment is operational prior to the inspection. The goal of this approach is to minimize the burden on CDFW LED and local LE Units by minimizing the time spent at any inspection target. The California District Attorneys Association has prepared a 2012 summary document; *Environmental Crimes Associated with Cultivation of Cannabis*. This document provides an overview of all crimes associated with the cultivation of cannabis and is included as Attachment D.

7.2.5 Proposed Inspection Structure

Please note that the process outlined below has been developed specifically to address marijuana cultivation inspections and the potential risks associated with grow sites. However, in 2011 the State Water Board and CDFW developed a *Field Guide for Coordinated Enforcement Response.* Staff participating in this coordinated effort should be familiar with its contents. This Field Guide is included as Attachment E.

Staff's proposed methodology for conducting marijuana cultivation inspections is based on a monthly cycle as follows:

Week 1, Meet and Confer
Interested parties (Water Board, CDFW, and County Departments including LE) within the designated Inspection Unit will meet the first Tuesday of every month. All parties participating in the meeting will bring complaints or cases of interest to the table. The group will discuss the cases, rank each of them using one of the approaches discussed above, identify current months inspection targets, develop preliminary inspection plans, identify leads (CDFW wildlife officers) and inspection team members.

Week 2, Preparation
CDFW LED and County LE will conduct recon of identified inspection targets. Water Board staff may be required to obtain independent inspection warrants as they cannot enter grow site without consent unless specific circumstances exist (emergency, etc) and cannot "piggyback" on LE warrants or authority. Staff shall work with their designated attorneys to make these determinations.

Week 3, Inspection Team Briefing
Meeting is facilitated by CDFW LED. CDFW LED will review results of the recon efforts, relay any modifications to the inspection plans, confirm inspection targets and dates of inspection(s), describe any special circumstances, dangers, threats, or other safety or entry concerns. Inspections may be conducted end of week three and during week four. Per the BCP, CDFW LED will carry out the following tasks:

- Perform complex investigations dealing with environmental and health and safety violations,
- Conduct tactical entry operations into marijuana cultivation sites and provide security to civilian staff during sampling and evidence collecting,
- Perform eradication and reclamation of these sites when necessary,
- Ensure data collection is being completed, de-confliction with allied law enforcement agencies, interview witnesses and informants and take custody of physical evidence,
- Secure and serve search warrants, complete crime reports, testify in court and coordinate cases with the district attorney, attorney general and circuit prosecutors,
- Take the lead in the investigation and coordination of the eradication and reclamation efforts for marijuana cultivation sites discovered on state-owned lands,
- CDFW Wildlife Officers may serve as resources for allied state agencies such as the Department of Forestry and Fire Protection and State Parks.

Week 4, Inspections
Inspections will be conducted during week four of each month. The morning of the inspection, the inspection team will meet at an established location and be briefed by CDFW LED. Law enforcement officials, either the Sheriff's office or CDFW wildlife officers, will serve as the inspection lead and coordinate travel to and from the inspections.

Once the inspection team is in the target area, inspectors will stage at a pre-determined location and wait for law enforcement officials to secure the inspection target. Law enforcement officials will notify the inspectors once the target is secure; all inspectors will enter the property, conduct the inspection, gather evidence, etc., leave the target, and stage at a designated post-inspection location. There, staff will wait until CDFW LED directs them to the next inspection target. It is estimated that an inspection team could conduct between 2 and 5 inspections per day pending travel time between targets. Over time it is expected that the Inspection Unit will identify ways to become more efficient allowing for inspections during different time frames of the month. The above strategy defining week 1 through 4 duties will be used as an initial methodology. Enforcement effort will change as needed not to set any particular enforcement pattern for team safety concerns.

While the proposed inspection methodology provides for one to 1.5 weeks of inspections per month it is anticipated that the bulk of staff time will be spent reviewing laboratory data, drafting investigative and inspection reports and enforcement orders, overseeing corrective action, assisting legal counsel in developing prosecutorial records, permitting and public outreach exercises, logging and documenting evidence and samples taken, preparing search warrants, follow up with court subpoenas and preparing site safety operational plans.

Prior to any formal inspection, CDFW LED would facilitate mock raid/ inspection exercise for both CDFW Wildlife and Water Board staff participating in the effort.

7.3 Enforcement (*BCP Requirement*)

Enforcement actions will be determined based on evidence obtained during an inspection. The agencies will evaluate the evidence and work with Water Board and CDFW attorneys to develop a recommended

enforcement and/or prosecution strategy. Further work with the District Attorneys and County Counsel's may be required to determine where to venue a case and what type of relief to seek. By the end of the fifth week, we expect to be positioned to make decisions on which cases to venue before the Water Boards for Cleanup and Abatement Orders and/or Administrative Civil Liability actions, which cases to venue before CDFW to impose administrative penalties for streambed alteration, pollution, and litter, which cases for the County Counsel to venue judicially in civil court for code abatement actions and seeking injunctive relief, and which cases should be prosecuted criminally by the relevant District Attorneys and/or the Attorney General's Office. The Water Boards expect that two independent teams will engage in this 5-week protocol on a staggered basis.

Two important considerations:

1. Executive Management will establish a Joint Prosecution Agreement between the CDFW and Water Boards,
2. Executive Management will establish a Memorandum of Understanding between the CDFW and Water Boards. This MOU should describe the procedures for determining lead agency for prosecution purposes.

7.3.1 Proposed Administrative Process

CDFW has begun developing an administrative enforcement strategy in response to the passage of AB 861. AB 861 amends Fish and Game Code section 12025 to grant CDFW authority to administratively impose penalties on a person found to have violated Fish and Game Code section 1602, 5650, or 5652 in connection with the production or cultivation of a controlled substance. Specifically, AB 861 adds section 12025(e) which provides administrative authority to CDFW's chief deputy director or law enforcement division assistant chief in charge of marijuana enforcement to serve a complaint on any person or entity on which an administrative penalty may be imposed and requires that the Director hold a hearing if requested. CDFW staff will be able to use this enforcement tool to combat violations of Fish and Game Code sections 1602, 5650, and 5652 in connection with the production or cultivation of marijuana in public and private lands.

For those cases being presented before the Water Board, staff will follow guidelines set forth in the *State Water Board's Water Quality Enforcement Policy* (Enforcement Policy). Generally speaking staff will determine whether violations at a site fall under Class I, II, or III, and proceed accordingly based on the nature of the violation and threat to water quality. Staff will also be enforcing any waiver that is adopted by the North Coast Water Board, which may contain streamlined procedures for cleanups and site management.

Staff will work with the State Water Board's Office of Enforcement and CDFW's LED and Staff Counsel to develop Cleanup and Abatement Order (CAO) and Administrative Civil Liability Complaint (ACLC) templates specific to marijuana grow sites. Each CAO and/or ACLC will identify the landowner as responsible party by default but name a renter, lessee, grower, or earthwork contractor where appropriate. This approach has been identified as a critical step in the deterrence of irresponsible site preparation and operations moving forward. Further, staff will work with the State Water Board's Office of Public Affairs and CDFW's Office of Communication, Education and Outreach to draft press releases of ACLs adopted against irresponsible land owners and marijuana cultivators.

Each CAO will require a licensed QSD/QSP, PG, or PE develop a Site Restoration Plan that includes a Time Schedule for emergency work to stabilize a site prior an upcoming rainy season and a long term restoration plan to be implemented during the following construction season. Water Code section 13304, grants the Water Boards authority to issue CAOs and allows the Water Boards to recover costs to oversee cleanup work. As such, all CAOs will require the discharger to pay for oversight of any cleanup efforts.

7.3.2 Prosecution

Not all marijuana inspections would result in the Water Board as the lead for administrative penalties. It is anticipated that in many cases, staff would serve to support the relevant County Counsel or District Attorney's office, or Attorney General's office in prosecution. In this role, County Counsel, the DA or AG might use staff inspection reports, written professional opinion, or expert testimony. The Water Board Office of Enforcement and CDFW's LED and Staff Counsel will assist staff in the event assistance is requested by a local prosecutor or the AG.

7.4 Education and Outreach (*BCP Requirement*)

Public outreach and education has been identified as a key component of the overall strategy to address illicit discharges at cultivation sites. The BCP specifically provides that, "Because the growers operate in a gray legal area, are not organized as an industry, fear prosecution, and have never been regulated, CDFW, State Water Board, and the Regional Boards anticipate that enrollment in the respective permits and adherence to existing permitting requirements and compliance with the permit terms will require more effort, resources, and time than other regulatory programs. Staff intends to reach out to landowners and grow operators and provide materials on best management practices and prohibitions."

While there is likely a multitude of options that would work, staff generally proposes a four pronged statewide outreach and education approach as follows:

1. Establish working relationships with marijuana industry groups,
2. Disseminate information to construction industry groups,
3. Develop a reference guide, post and distribute,
4. Work with the Office of Public Affairs to publicize enforcement actions against responsible parties.

The North Coast Regional Water Board and CDFW proposes to continue and expand education and outreach efforts already underway on the North Coast in parallel to the four pronged approach, as discussed in section 7.4.5 below.

7.4.1 Marijuana Industry Groups

Staff should establish a cooperative working relationship with marijuana industry groups. These groups have invested significant resources in networking and cultivation infrastructure. The industry has a vested interest in making sure that movements to legalize marijuana continue to develop. That being said, they also have a vested interest in projecting the most positive image on the industry to gain public support, one that requires sequestration of negative public perception, such as the environmental damage caused by growers.

Staff has identified various groups including, but not limited to the following, to work together with the outreach process:

- Western Plant Science Association
- California NORML (National Organization for the Reform of Marijuana Laws)
- California Cannabis Industry Association (CCIA)
- Americans for Safe Access

Staff has initiated conversation and is in the process of setting meetings with the CCIA and Western Plant Science. Staff will work to determine the most effective means of educating their members. In some cases education may be conducted via the groups themselves or through Water Board and CDFW initiated seminars. Long term continuing education would likely be facilitated through the established regulatory program, much like the coalition approach in the Irrigated Ag Program in the Central Valley Region.

7.4.2 Construction Industry Groups

Sediment discharges from grading activity pose a significant threat to water quality. Because marijuana cultivation often occurs in remote areas away from the general public's view, near pristine headwaters, in sensitive watersheds, on steep ground, and on cheap land, heavy earthwork is often required to gain access to the site and prepare the site by clearing vegetation, terracing slopes, etc. Earthwork contactors are often but not always hired to do this work and assume some liability if the work is done without proper permits and BMPs.

The Water Boards and CDFW will work to educate construction groups about potential liabilities and how to avoid them and the water quality and supply impacts associated with grading and site development. In doing so, staff would explore educational opportunities and liabilities associated with the following groups:

- Contractor Licensing Board,
- Builders Exchanges,
- QSP/QSD courses, BMP discussions,
- Heavy equipment rental yards

7.4.3 Reference Guide

As mentioned above the Washington Department of Fish and Wildlife has developed a pamphlet, *Gold and Fish; Rules for Mineral Prospecting & Placer Mining*. The Pamphlet contains all of the necessary rules a miner must be aware of and comply with when mining in or along the banks of watercourse. Here, staff will develop a similar document outlining all of the Water Board and CDFW laws and regulations, and BMPs applicable to marijuana cultivation. The pamphlet would also be used as a reference explaining the process on how to obtain the needed CDFW and Water Board permits. The pamphlet could be posted on the Water Boards' and CDFW's web pages and be made available to the public through industry groups or hand delivery during inspections, etc. The Pamphlet is included as Attachment B.

7.4.4 Publicize Enforcement Actions

While it is understood publicizing enforcement actions alone will not likely have a significant effect in achieving the goals and objectives of this Program, publicizing enforcement actions can result in information about the consequences of reckless cultivation practices filtering down to the regulated public and landowners who rent or lease property to cultivators.

Therefore, staff proposes working with State Water Board's Office of Public Affairs and California Department of Fish and Wildlife, Office of Communication, Education and Outreach to develop a template for press releases publicizing marijuana enforcement cases and publicizing pertinent enforcement actions.

7.4.5 North Coast Regional Water Board Existing and Continuing Efforts

As discussed above, staff of the North Coast Regional Water Board, in coordination with CDFW Northern Region, has long been involved in various activities associated with addressing water resource impacts resulting from marijuana cultivation. With respect to education and outreach, staff is active on several fronts.

a) Grower groups and programs

Staff have made contact with marijuana grower organizations in Humboldt County (Emerald Growers' Association) and in Mendocino County (Mendocino Small Farmers), and have identified both as important cooperators/stakeholder representatives to participate both in regulatory program development and implementation, as well as education, outreach, and technical support for growers. Staff will work to identify other similar organizations as applicable to include in and assist with these efforts.

b) Resource Conservation Districts (RCDs)

Staff of the North Coast Regional Water Board work closely with a number of RCDs throughout the Region in developing and implementing water quality protection policies, programs and projects. The RCDs have proven to be invaluable partners in providing education, outreach, and technical support to landowners and facility operators subject to requirements imposed by the Regional Water Board. Staff anticipates working with applicable RCDs in regulatory program development, implementation, and associated education and outreach. In 2014, the State Water Board approved Cleanup and Abatement Account funding to contract with the Mendocino County RCD to develop and distribute a sustainable growers' guide of BMPs for medical marijuana growers. Initial guide presentation and distribution will focus on the Eel River watershed, but the guide will be applicable to similar operations throughout and beyond Mendocino County and the North Coast Region.

c) Watershed Groups

The North Coast Region is home to the Emerald Triangle, where marijuana has been cultivated for many years, since well before the adoption of Proposition 215 and AB 420. While the Region has seen a recent explosive increase in marijuana cultivation, including a substantial influx of growers from outside the area, many people growing marijuana in the Region are also long-term established residents, who are active members of their communities, and who are interested in protecting their watersheds. Staff of the North Coast Region believe that there is significant potential to effect improvements in land management and water use practices among this sector of the grower population, and that the people most ideally positioned to assist in such an effort are watershed protection groups comprised of residents within the watersheds themselves. To this end, North Coast Regional Water Board staff have obtained Cleanup and Abatement Account funding and are close to executing a contract with the Trees Foundation, sponsoring the Eel River Recovery Project in a citizen-based watershed monitoring, education, and outreach effort. Deliverables from this effort will include a number of informational and educational brochures, videos, articles, and other products in a number of media forms related to water quality protection and conservation, focusing on the Eel River watershed, but likely applicable in other watersheds.

d) Non-profits

Staff has worked cooperatively with non-profit agencies within the Region on various water resource protection efforts, including activities related to TMDL implementation and education and outreach related to water conservation. Under the most recent round of 319(h) grant funding, the Water Boards have awarded funding to two non-profit groups, California Trout, Inc. and the Salmonid Restoration Federation for two projects in sub watersheds of the South Fork Eel River watershed addressing instream flows and stream temperatures. Both watersheds are experiencing adverse impacts to stream flows and temperatures, in part due to the cumulative impacts of marijuana cultivation. Both projects will include watershed resident/stakeholder outreach and education related to water conservation measures and practices. Where possible, North Coast Water Board staff will identify additional opportunities both with these groups and other non-profits active in the North Coast Region to assist in developing and disseminating information geared towards improving water quality protection and use practices associated with marijuana cultivation.

e) Media Contact

Staff has participated in numerous interviews and talk shows both with local and regional media, as well as national media (including print, radio, and television) to discuss the environmental and water resource impacts associated with marijuana cultivation. The North Coast Regional Water Board maintains a Fact Sheet on this topic on its website. Staff will continue to look for and participate in opportunities to educate the public, including marijuana cultivators and users, as to these impacts, and programs and projects underway to address these impacts.

f) Workshops, seminars, conferences, interest group gatherings

Staff have attended and participated in many workshops and seminars, sometimes appearing on joint agency panels with representatives from DFW, Cal Fire, BLM, and other partner agencies. to educate attendees about environmental resource impacts associated with marijuana cultivation. Staff will continue to look for and participate in these opportunities where it appears that staff participation will educate stakeholders, partners, or other interested parties.

g) Informational materials

Staff has developed fact sheets providing information about marijuana site development and cultivation related activities that may require water quality permitting, review, or oversight. As noted above, staff will be contracting with the Trees Foundation and the Mendocino County RCD to develop a number of informational materials that can be posted on the Water Boards' website, distributed, presented, or shared with others, displayed at public gatherings, etc. Based on input from cooperators, partners, stakeholders, and others, staff will continue to look for opportunities to share education and outreach materials, and, where appropriate, to develop or work with others to develop appropriate materials in appropriate media to reach a wider audience or to effect further change.

7.5 Coordination with Other Agencies (*BCP Requirement*)

Water Board and CDFW staffs have already initiated coordination with other state and local agencies. This work primarily has been through small group meetings and the larger Working Group meetings. Staff will continue to work with our existing partners and work to engage those agencies not yet participating in this effort as identified in Table 4 below. Through this process staff hopes to develop a well-coordinated effort, clearly outlining each agency's roles, responsibilities, and available resources and identifying points of contact. Over time, it is anticipated that agencies involved in this effort may need to establish a separate meeting forum to discuss more sensitive or strategic topics before presenting them to the Working Group.

Table 4 - Coordinated Agency Summary

Current Participants:	CalEPA State Water Resources Control Board Office of Enforcement Office of Chief Counsel Central Valley Regional Water Quality Control Board North Coast Regional Water Quality Control Board California Department of Fish and Wildlife California Department of Forestry and Fire Protection California Department of Water Resources California Department of Pesticide Regulation California Department of Justice Butte County Shasta County Tehama County

	Mendocino County Humboldt County
Future Participants	U.S. Fish and Wildlife Service U.S. Department of Food and Agriculture The Department Toxics Substances Control CalRecycle Bureau of Land Management U.S. Forest Service U.S. EPA Other Counties within the Pilot Area

7.6 Cleanup Options

The BCP specifically charges that CDFW LED will, "…take the lead in the investigation and coordination of the eradication and reclamation efforts for marijuana cultivation sites discovered on state-owned lands." It is however unclear as to which agency would coordinate the cleanup on privately owned lands in instances where the landowner does not have the funds to do so. This is important as the primary focus of this cooperative effort is private lands. Staff has thus far identified the following potential funding sources:

- **CalRecycle** has funds available to remove and dispose of solid waste at abandoned and orphaned sites. CalRecycle also has a separate pot of money to assist ranchers and farmers with disposal of solid wastes that have been illegally dumped on their lands.

- **The Department of Toxic Substances Control** has funds to remove and dispose of hazardous materials at abandoned and orphaned sites.

- **The California National Guard,** Joint Task Force Domestic Support - Counterdrug has also taken an active role in site eradication and reclamation. In recent years the California National Guard has teamed up with the California Department of Fish and Wildlife, California Department of Justice and the USFS to remediate illegal marijuana sites. There are some caveats; their assistance must be requested by law enforcement and they must be accompanied by law enforcement. The National Guard typically does not assist with prop 215 marijuana enforcement operations on private property. The National Guard will assist on all state owned or public property marijuana cultivation sites. The National Guard generally does this work in winter months but has followed behind eradication teams in summer months.

- **AB 2184 (Chesbro), Timber and engineered wood products assessment: forest restoration grants.** This bill would amend language passed through AB1492, which established the Timber Regulation and Forest Restoration Fund (TRFRF). The TRFRF established a processed timber sales tax, which in part, "supports the activities and costs of the department, the Department of Conservation, the Department of Fish and Game, the State Water Resources Control Board, and regional water quality control boards associated with the review of projects or permits necessary to conduct timber operations." AB1284 additionally authorizes money from the TRFRF to be used by the **Department of Forestry and Fire Protection** to provide grants to remediate former marijuana growing operations (no designation for private or public lands). AB2184 was unanimously approved by the Assembly's Natural Resources Committee.

Staff working in the Program would develop working relationships with CalRecycle, the Department of Toxic Substances Control, the California National Guard, and the Department of Forestry and Fire Protection to better identify uses and limitations of these funds and work to develop streamlined process to obtain those funds and administer cleanup of marijuana cultivation sites in a timely manner.

7.7 Health and Safety Plan

Health and safety of Water Board and CDFW staff conducting inspections is of upmost importance. Staff must be well versed in the dangers associated with the myriad of manufactured chemicals, domestic wastes, and physical hazards associated with marijuana cultivation. These include but are not limited to fertilizers, pesticides, herbicides, rodenticides, and physical hazards such as booby traps and explosions associated with the manufacture of honey oil. While CDFW LED is highly trained in these dangers and would accompany Water Board staff on all inspections, staff would work with State Water Board Industrial Hygienists and Bob Ford, Senior Industrial Hygienist with CDFW's OSPR Unit to develop a Health and Safety Plan specifically addressing marijuana cultivation inspections. All CDFW and Water Board staff engaged in duties specified by the OSHA's HAZWOPER standard (http://www.osha.gov/html/faq-hazwoper.html) will receive HAZWOPER certification.

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7.8 Communication Plan

The Water Board's and CDFW efforts to regulate marijuana cultivation sites are complex for many reasons. *Politically*, state legislators are forced to respond to a polarized constituency of those who want to grow responsibly and those who are adamantly opposed to it for a number of reasons that range from environmental damage, to water diversion, to property values, and safety concerns. *Legally*, law enforcement officials find themselves caught between federal laws that outright ban the use or cultivation of cannabis, federal agencies (DOJ), which provide vague guidance seemingly in favor of state law, and state laws that are vague and difficult to enforce (Prop 215). These factors are compounded by the migratory nature of many growers, and the blurred lines between those growers that simply lack knowledge of environmental regulation and those in it simply for profit.

Due to the complexities and attention the subject is receiving it is imperative that the Water Boards and CDFW provide a clear, consistent message to all parties throughout the development and implementation phases of the marijuana program. The State Water Board has developed a Communication Plan and Fact Sheet to initiate this need; both of which are included as Attachment F. Executive Management will review the Communication Plan regularly throughout the development of this program and make necessary changes as needed. This effort will be coordinated through the Executive Oversight Committee.

7.9 Challenges

Staff has identified a number of challenges the Water Board and CDFW faces in regulating discharges associated with marijuana cultivation. Staff is identifying these challenges, not because they are unique to marijuana cultivation, but because we expect these challenges to impact the overall effectiveness of the program. A few of these challenges are discussed here:

- Haz Waste/Chemical Removal and Disposal Costs, Liability
- Enforcement of Illegal Water Diversions (Regulatory tools, Staffing, Statute, Penalties insufficient)
- Migratory Nature of Growers
- Program sustainability – fee mechanisms

7.10 Legislative Considerations

Staff has identified the following legislative considerations to better facilitate Water Board and CDFW involvement in regulating and prosecuting marijuana cases.

7.10.1 Water Board

AB 2442 (Gordon) Porter-Cologne Water Quality Control Act: remedial action: liability.
Water Board Sponsored Bill. This bill would provide the State Water Board and Regional Water Boards with explicit protection from civil liability related to investigating and cleaning up water pollution.

Water Code section 1052– The diversion or use of water subject to State Water Resources Control Board (State Water Board), authority other than as authorized by the Division of Water Rights (Division) is a trespass. The State Water Board may impose civil liability of up to $500 per day that a trespass occurs, or $1,000 per day and $2,500 per acre-foot of water diverted in excess of that diverter's water right during a drought year.

Water Code sections 5100-5107 – Requires any person who diverts water to file with the State Water Board a Statement of Water Diversion and Use (Statement). The State Water Board may impose a civil liability of $1,000 for failure to file a Statement and $500 per day for each additional day the violation continues after receiving notice.

Water Code 1846 – The State Water Board, during a drought year, may impose civil liability in the amount of $500 per day for violation of a term or condition of a permit, license, certificate or registration issued by the Division and a regulation adopted by the board pursuant to WC 1058.5.

Above are the most applicable sections in the Water Code to enforce against Marijuana diverters. Civil liability may be imposed on each, but there is no mechanism for traditional law enforcement to deal with the problem on a criminal basis in the field. The process to go after the violator is very tedious and frequently a resolution will not be had before there is substantial impact on aquatic resources.

Staff's Proposal:

Provide a mechanism to prosecute entities, without a water-right, from drafting or diverting water.

7.11 Implementation Schedule

The proposed schedule for development and implementation of the marijuana program is included on the next page. Important steps include the following:

- Administrative Tasks (CDFW and Water Board Strategic Plan approval, MOU, and JPA development, Health and Safety Plan)
- Resources (Additional staff approval, allocation, hiring process)
- Organize and Form Joint Inspection Units/Training
- Permitting mechanism (Waiver or other)
- Identify lab resources

Proposed Timeline

Marijuana Program Development/Implementation Plan

WATER BOARD/ FISH AND WILDLIFE

Marijuana

Proposed Timeline, Program Development/Implementation

			2014									2015												2016					
TASK	DELIVERABLE	DUE DATE	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
ADMINISTRATIVE																													
Submit Draft Strategic Plan	Draft Plan	30-Apr-2014																											
Comment Period		15-May-2014																											
Final Approval, Strategic Plan	Final Plan, Signed Off	1-Jun-2014																											
Memorandum of Understanding, CDFW and Water Boards	Final MOU	1-Jun-2014																											
Joint Prosecution Agreement	Final JPA	1-Jun-2014																											
Health and Safety Plan	Final HSP	1-Jun-2014																											
RESOURCES																													
Legislative Hearing, Resources for Marijuana Program		24-Apr-2014																											
Governor's May Revise		15-May-2014																											
Governor's Passage of the Final Budget		1-Jul-2014																											
Water Board's Allocation of Approved Resources	Howard Approval	15-Aug-2014																											
Duty Statements/Vacancy Announcements		15-Aug-2014																											
Fly Positions		1-Sep-2014																											
Fill Positions		1-Sep-2014																											
Training Needs (HazWopper, etc)		1-Oct-2014																											
JOINT INSPECTIONS																													
Inspection Units, Organize/Identify Personnel	Complete Training	1-Sep-2014																											
Mock Raid/Inspection Training (CDFW LED)		15-Sep-2014																											
PERMIT DEVELOPMENT																													
Stakeholder Meetings																													
Board Workshops																													
Draft Permit/Waiver	Draft Permit/Waiver																												
Public Comment, Admin Process, Etc																													
Final Permit/Waiver	Final Permit/Waiver	1-Oct-2015																											
LAB BUDGETS																													
Identify Available Resources (Bauer/Bracamonte)		1-Jun-2014																											

Axner Evidence – Exhibit 2

Axner Evidence – Exhibit 3

Storm Water Program

2009-0009-DWQ CONSTRUCTION GENERAL PERMIT (*EFFECTIVE JULY 1, 2010*)

Disclaimer: Nothing herein constitutes official agency interpretation of State Water Resources Control Board Order No. 2009-0009-DWQ. The actual provisions of Order No. 2009-0009-DWQ should be consulted, as they will govern in all circumstances. The information contained in this FAQ is for general guidance purposes only, and the State Water Board does not assume any legal liability or responsibility for the accuracy, completeness, or usefulness of this information.

Construction General Permit – Technical Bulletins

- Issue 2013.1
- Issue 2013.1 - pH excel

General Construction – Frequently Asked Questions

1. How do I know if I need this permit?
2. Are there other requirements I should be aware of when applying for this permit?
3. Who should apply, and who is the proper signatory?
4. What are the fees associated with the Permit?
5. Who do I contact for questions regarding an invoice?
6. How do I apply for coverage?
7. How long will it take for me to get my WDID number after I submit my PRDs to SMARTS? Is there a staff or public review process before the WDID is issued?
8. How long are PRDs available online after the WDID number is terminated?
9. How can I find out the status of my permit?
10. Will SMARTS track enforcement data as well?
11. How long is my permit in effect?
12. Can I terminate or sell a portion of my project?
13. What if I sell the property prior to completing the construction?
14. After qualification as a Qualified SWPPP Practitioner (QSP) or Qualified SWPPP Developer (QSD), does a QSP or QSD need to maintain the pre-qualifications listed in Section VII of the 2009-0009-DWQ Permit? (T) (L) (C)
15. What kind of training is required for our company's site superintendents? Can we hire one QSP to train all of them?
16. Can a QSD or QSP be an independent contractor?
17. Is the QSD and/or QSP responsible for project compliance, or the project owner?
18. How can I become a Qualified SWPPP Developer (QSD)/ Qualified SWPPP Practitioner (QSP)?
19. How much will it cost to take the State Sponsored QSD/QSP Training course?
20. Where can I get information on QSD/QSP pre-requisite programs to see if I am eligible?
21. What is the role of the local municipality in reviewing/enforcing the SWPPP?
22. Who is responsible for preparing and implementing the Rain Event Action Plan (REAP)? Do you have to be a QSP?

23. When do I need to develop a REAP?
24. Where can I get copies of inspection forms?
25. What is a Sediment Sensitive Watershed?
26. Once a phase of my construction project has been completed, can I re-calculate my risk level based on existing site conditions. If found to be different from the initial risk, can I resubmit the new risk level with a Change of Information (COI)
27. Where can I obtain guidance for pH and turbidity sampling?
28. Where can I obtain guidance for Bioassessment Monitoring?
29. Please clarify the meaning and use of the term “direct discharge”
30. Will local municipalities be revising their storm water quality development standards to be consistent with the post-construction requirements in the CGP?
31. What are the training requirements to operate and maintain an Active Treatment System?
32. What is the difference between the Legally Responsible Person (LRP), Approved Signatory, and Data Submitter? (updated 3/1/10)
33. What documents must be submitted to the State Water Board and Regional Water Boards?
34. Do all projects need to submit an Annual Report? (posted 3/4/10)
35. Where can I get guidance for on-site rain gauge installation and reading?
36. I would like to design a sediment basin for my project. The 2009-0009-DWQ permit requires sediment basins to be designed according to the method provided in CASQA’s Construction BMP Guidance Handbook. Do I need to purchase the handbook in order to design a sediment basin for my project?
37. At what point will the Attachment F, Active Treatment System requirements apply on my site?
38. Will a risk re-calculation be required if my project extends past the original construction end date specified?
39. When will effluent monitoring be required at my site?
40. In Appendix 3 - Bioassessment Monitoring Guidelines, various links are outdated. How can I access the correct information/pages?
41. Attachment D – Risk Level 2 (page 19) and Attachment E – Risk Level 3 (page 20) NAL Exceedance Report requirements state, “In the event that any effluent sample exceeds an applicable NAL, dischargers shall electronically submit all storm event sampling results…” Is this correct? (T) (L) (C)
42. What is the requirement for a pre-storm event visual inspection? (T) (L) (C)
43. Provision XIII.A.4 of the CGP requires the discharger to “preserve the pre-construction drainage density (miles of stream length per square mile of drainage area) for all drainage areas within the area serving a first order stream or larger stream and ensure that post-project time of concentration is equal or greater than pre-project time of concentration.” How does a discharger comply with these requirements? (T)
44. Will daily average pH values be calculated linearly or through the logarithmic method? (T) (L) (C)
45. Watershed Sediment Risk is expressed in units of tons/acre. Why doesn’t project site size factor into Watershed Sediment Risk? (T) (L) (C)
46. Assuming my project lasts at least one year, do I need to implement erosion and sediment controls year round, even though a small percentage of my RUSLE Rainfall-Runoff Erosivity Factor (R factor) occurs during the summer months? (T) (L) (C)
47. My local Regional Board is questioning the R-factor calculated for my project using EPA’s erosivity index calculator. Can they do this? (T) (L) (C)
48. Where do I submit complaints about a Qualified SWPPP Developer (QSD) or a Qualified SWPPP Practitioner (QSP)? (T) (L) (C)
49. Can straw wattles be left at a project site applying for a Notice of Termination (NOT)?
50. If a project is located within an area that is subject to post-construction standards of an active Phase I or Phase II MS4 permit, but the MS4 approved the project prior to the MS4 having Phase I or Phase II post-construction standards, does that project have to comply with the post-construction standards of the CGP (see Section XIII)?

(T) = Traditional Construction Sites | **(L)** = Linear Construction Sites | **(C)** = Caltrans Sites

1. **How do I know if I need this permit? (T) (L) (C)**
   Construction activity resulting in a land disturbance of one acre or more, or less than one acre but part of a larger common plan of development or sale must obtain the Construction Activities Storm Water General Permit (2009-0009-DWQ Permit). Construction activity includes clearing, grading, excavation, stockpiling, and reconstruction of existing facilities involving removal and replacement. Construction activity does not include routine maintenance such as, maintenance of original line and grade, hydraulic capacity, or original purpose of the facility.

   Storm water discharges in the Lake Tahoe Hydrologic Unit are regulated by a separate construction permit(s) adopted by the respective California Regional Water Quality Control Board, and may not seek coverage under the State Water Resources Control Board's General Permit. Storm water discharges associated with construction activity on Indian lands will be regulated by the U.S. Environmental Protection Agency.
2. **Are there other requirements I should be aware of when applying for this permit? (T) (L) (C)**
   There may be other permits or requirements in addition to the 2009-0009-DWQ Permit. For example, you may also need a streambed alteration agreement from the Department of Fish and Game, a Water Quality Certification (Clean Water Act Section 401) as administered by the State and Regional Water Quality Control Boards, and/or Clean Water Act Section 404 permit administered by the U. S. Army Corp. of Engineers. Contact the appropriate Regional Water Quality Control Board to determine if other permits are required for your construction activity.
3. **Who should apply, and who is the proper signatory? (T) (C)**
   The 2009-0009-DWQ Permit states the Legally Responsible Person (LRP) or a person legally authorized to sign and certify on behalf of the LRP is responsible for obtaining permit coverage.
4. **What are the fees associated with the Permit? (T) (L) (C)**
   The annual fees are based on total disturbed area of the construction project in acres. See Construction fees for a list of fees by acres. You will continue to receive an annual invoice until your project is complete and a Notice of Termination is electronically submitted and approved by each Regional Water Quality Control Board that your project resides in.

   Projects continuing from the 99-08-DWQ Permit into the 2009-0009-DWQ Permit will pay the annual fees based on their current billing cycle.
5. **Who do I contact for questions regarding an invoice? (T) (L) (C)**
   If you have questions regarding outstanding invoices or payments please contact our Fee Unit at (916) 341-5247.
6. **How do I apply for coverage? (T) (L) (C)**
   The LRP must electronically submit Permit Registration Documents (PRDs) prior to commencement of construction activities in the Storm water Multi- Application Report Tracking System (SMARTS). PRDs consist of the Notice of Intent, Risk Assessment, Post-Construction Calculations, a Site Map, the SWPPP, a signed certification statement by the LRP, and the first annual fee.
7. **How long will it take for me to get my WDID number after I submit my PRDs to SMARTS? Is there a staff or public review process before the WDID is issued? (T) (L) (C)**
   PRDs consist of the Notice of Intent, Risk Assessment, Post-Construction Calculations, a Site Map, the SWPPP, a signed certification statement by the LRP, and the first annual fee. Once these components have been submitted and are deemed complete by the SMARTS system, a WDID number will automatically be emailed to the LRP.
8. **How long are PRDs available online after the WDID number is terminated? (T) (L) (C)**
   PRDs and other reports will be available to the public to view for 5 years after the NOT approval date.
9. **How can I find out the status of my permit? (T) (L) (C)**
   LRPs can log into the SMARTS system to obtain the status, or can download or search the construction storm water database on the Storm Water Program Database.
10. **Will SMARTS track enforcement data as well? (T) (L) (C)**
    Yes. Regional Water Boards will enter their inspection and enforcement data into SMARTS.
11. **How long is my permit in effect? (T) (L) (C)**
    Your coverage under the 2009-0009-DWQ Permit remains in effect until a Notice of Termination (NOT) is submitted in SMARTS and approved by each Regional Water Board that your project resides in. If the Regional Water Board denies the NOT, you are responsible for any missed or outstanding invoices. For outstanding invoices, a complete NOT must be received by the Regional Water Board 90 days from the original invoice date in order to cancel the invoice. If a complete NOT is received after 90 days, the invoice is deemed valid and

payable.

12. **Can I terminate or sell a portion of my project? (T) (L) (C)**
Yes, the 2009-0009-DWQ Permit allows a discharger to terminate portions of a construction project if those portions have been sold to another owner. The permit is not transferable, so the responsibility to obtain permit coverage, update the Storm Water Pollution Prevention Plan (SWPPP), and comply with permit requirements becomes that of the new owner. The seller must notify the new owner about his/her responsibilities concerning the permit, and must notify the State Water Board by submitting the new owner's name, address, and phone number on the Change of Information (COI) form for the termination to be processed. The seller must also disclose the state of construction, primarily if construction activity is ongoing, or if the post-construction requirements are completed.
13. **What if I sell the property prior to completing the construction? (T) (L) (C)**
The new owner must submit new PRDs within 30 days of the date of change of ownership. For ongoing construction activity involving a change of ownership, the new owner must review the existing Storm Water Pollution Prevention Plan (SWPPP), determine if it is appropriate for the construction activity being undertaken. If it is not in compliance, then the SWPPP must be amended, or a new SWPPP developed.
14. **After qualification as a Qualified SWPPP Practitioner (QSP) or Qualified SWPPP Developer (QSD), does a QSP or QSD need to maintain the pre-qualifications listed in Section VII of the 2009-0009-DWQ Permit? (T) (L) (C)**
Yes. The 2009-0009-DWQ Permit requires a QSP or QSD to have one of the pre-qualifications listed in Section VII of the 2009-0009-DWQ Permit to maintain standing as a QSP or QSD
15. **What kind of training is required for our company's site superintendents? Can we hire one QSP to train all of them? (T) (L) (C)**
Yes, one QSP can train all company superintendents. However, the Regional Water Board inspectors may ask to meet and/or conduct an inspection with the QSP responsible for a particular project/site, and that individual should be accessible. The QSP is responsible for the implementation of BMPs on each construction project, not the trained superintendents.
16. **Can a QSD or QSP be an independent contractor? (T) (L) (C)**
Yes.
17. **Is the QSD and/or QSP responsible for project compliance, or the project owner? (T) (L) (C)**
The LRP is always ultimately responsible for project compliance. This individual must certify the PRDs and will be the recipient of any Notices of Violations (NOVs) or Administrative Civil Liabilities (ACL; fines) for the project.
18. **How can I become a Qualified SWPPP Developer (QSD)/ Qualified SWPPP Practitioner (QSP)? (T) (L) (C)**
Section VII of the 2009-0009-DWQ Permit lists pre-qualifications for the QSD and QSP. In addition to meeting one of the listed pre-qualifications, an individual must have attended a State Water Board sponsored or approved QSD/QSP training course. Get information on this training course.
19. **How much will it cost to take the State Sponsored QSD/QSP Training course? (T) (L) (C)**
Costs will vary. Since private training vendors who have been selected/approved to work as “trainers of record” and “specialized trainer” (through a structured Request for Qualifications process) will offer their own training courses. Each course will be required to be a certain length (i.e., minimum training hours for each required module; likely 2-3 days per designation) and follow prescribed standards, but training courses will vary in specific content/approach and are expected to vary in cost.
20. **Where can I get information on QSD/QSP pre-requisite programs to see if I am eligible? (T) (L) (C)**

Pre-Requisite QSD/QSP Certifications/Registrations	Type	Website
California Registered Professional Civil Engineer	QSD/QSP	www.pels.ca.gov
California Registered Professional Geologist or Engineering Geologist	QSD/QSP	www.geology.ca.gov
California Registered Landscape Architect	QSD/QSP	www.latc.ca.gov
Professional Hydrologist registered through the American Institute of Hydrology	QSD/QSP	www.aihydrology.org
Certified Professional in Erosion and Sediment Control (CPESC) registered through Enviro Cert International Inc.	QSD/QSP	www.envirocertintl.org
Certified Professional in Storm Water Quality (CPSWQ) registered through Enviro Cert International Inc.	QSD/QSP	www.envirocertintl.org
Professional in Erosion and Sediment Control registered through the	QSD/QSP	www.nicet.org

National Institute for Certification in Engineering Technologies – Level 3 (NICET)		
Certified erosion, sediment and storm water inspector through Enviro Cert International Inc. (CESSWI)*	QSP	www.envirocertintl.org
Certified Inspector of Sediment and Erosion Control registered through Certified Inspector of Sediment and Erosion Control Inc. (CISEC)	QSP	www.cisecinc.org

21. **What is the role of the local municipality in reviewing/enforcing the SWPPP? (T) (L) (C)**
The local municipal storm water programs and the CGP requirements intentionally have some overlap/redundancy. However, the local municipality has no authority to enforce the State's CGP requirements; this is done by the Regional Water Board inspectors. Typically, the local agency is responsible for ensuring compliance with local storm water ordinance which prohibits sediment and other pollutants from entering the municipal separate storm sewer system, and with a local grading ordinance which typically requires an erosion and sediment control plan (typically a sheet in the construction plan set) for projects with a grading permit. In some cases, the local municipality may have a condition in their MS4 storm water permit requiring the agency to check that certain items are included in the SWPPP. This does not constitute approval of the SWPPP and the review is typically conducted prior to issuing a grading permit.
22. **Who is responsible for preparing and implementing the Rain Event Action Plan (REAP)? Do you have to be a QSP? (T) (C)**
The project QSP must develop and be in responsible charge of implementing the REAP. A QSD may also implement the REAP if they are also in responsible charge for implementing the SWPPP onsite.

    The REAP is a living document specific to a project site. A new REAP must be prepared/revised specific to each forecasted rain event (any likely precipitation event forecast of 50% or greater probability). However, some of the REAPs for an individual project might look similar for each construction phase.
23. **When do I need to develop a REAP (T) (C)**
A REAP must be developed 48 hours prior to any likely precipitation event. (NOAA – 50 percent or greater probability of producing precipitation) This is determined by:
    1. Visit the NOAA Website
    2. Enter your zip code or city & state in the search box and click “go”
    3. Scroll down to the bottom right hand of the page under “Additional Forecasts & Information”
    4. Click on “Forecast Weather Table Interface” at the bottom of the section
24. **Where can I get copies of inspection forms? (T) (L) (C)**
The 2009-0009-DWQ Permit lists minimum criteria required for an inspection checklist. Dischargers may develop their own inspection forms, or may contact their local Regional Water Board for an inspection form if one is available.
25. **What is a Sediment Sensitive Watershed, and how is it determined? (T) (L) (C)**
A sediment sensitive watershed drains into a receiving water body (1) listed on EPA’s approved CWA 303 (d) list for sedimentation/siltation, turbidity with an approved TMDL or (2) designated with beneficial uses of SPAWN, MIGRATORY and COLD. Dischargers may either use the State Water Board provided GIS guidance maps (in SMARTS and at ftp://swrcb2a.waterboards.ca.gov/pub/swrcb/dwq/cgp/Risk/), or conduct a site specific analysis using the State Water Board 303(d) listings and the local Regional Board Basin Plans. Where a discharger disagrees with the State Board provided GIS guidance map, a site specific analysis should be conducted with supporting documentation submitted as an attachment in SMARTS.
26. **Once a phase of my construction project has commenced, can I re-calculate my risk level based on existing site conditions. If found to be different from the initial risk, can I resubmit the new risk level with a Change of Information (COI)? (T) (C)**
No. The only scenario where risk can be recalculated based on existing site conditions would be if there is a change in ownership or if a portion of the project is sold. For all other projects, the initial risk calculated during PRD submittal applies until the construction end date.
27. **Where can I obtain guidance for pH and turbidity sampling? (T) (L) (C)**
The Surface Water Ambient Monitoring Program (SWAMP) has a Guidance Compendium for Watershed Monitoring and Assessment. Sections 3.1.4 and 3.1.5 of this Compendium contain guidance for pH and turbidity sampling.

    A SWAMP Field Methods Course training CD is also available for the public. Please contact

stormwater@waterboards.ca.gov to request a copy.

28. **Where can I obtain guidance for Bioassessment Monitoring?**
SWAMP 2007 Bioassessment SOP includes standard operating procedures for bioassessment.

29. **Please clarify the meaning and use of the term "direct discharge" (T) (L) (C)**
The CGP glossary defines direct discharge as "a discharge that is routed directly to waters of the US by means of a pipe, channel, or ditch (including a municipal storm sewer system), or through surface runoff. Discharges from a construction site to a MS4 where commingling with upstream and/or downstream discharges can occur are not considered 'direct discharges'."

30. **Will local municipalities be revising their storm water quality development standards to be consistent with the post-construction requirements in the CGP? (T) (C)**
Projects located within an area subject to post-construction standards of an active Phase I or II MS4 permit that has an approved Storm Water Management Plan are exempt from the post-construction requirements in the CGP.

31. **What are the training requirements to operate and maintain an Active Treatment System? (T) (L) (C)**
Order No. 2009-009-DWQ requires that all Active Treatment System (ATS) operators have training specific to using ATS's liquid coagulants. By July 1, 2010, projects requiring the usage of an Active Treatment System (ATS) are to be operated and maintained by Certified ATS operators.

    - Training shall be in a form of a formal class with a certificate and requirements for testing and certificate renewal.
    - Training shall include a minimum of eight hours classroom and 32 hours field training.

32. **What is the difference between the Legally Responsible Person (LRP), Approved Signatory, and Data Entry Person? (T) (L) (C)**

    - The **LRP** is the person who possesses the title of the land or the leasehold interest of a mineral estate upon which the construction activities will occur for the regulated site. For linear underground/overhead projects, it is the person in charge of the utility company, municipality, or other public or private company or agency that owns or operates the linear underground/overhead project.
    - The **Approved Signatory** is a person who has legal authority to sign, certify, and electronically submit Permit Registration Documents and Notices of Termination on behalf of the Legally Responsible Person.
    - The **Data Entry Person** is any individual authorized by the LRP or an Approved Signatory to enter data on behalf of the LRP or Approved Signatory. A data submitter may be other employees, contractors, labs, etc.

33. **What documents must be submitted to the State Water Board and Regional Water Boards? (T)(C)**

TRADITIONAL CONSTRUCTIONAL PROJECTS

Document	Developer/Certifier	Timeline
Annual Report	Discharger	September 1st
– Employee Training Documentation	Discharger	In Annual Report
ATS Operation & Maintenance (O&M) Plan	Discharger	Develop prior to implementation of an ATS system
ATS Plan	Discharger	Submitted 14 days prior to implementation of an ATS system
ATS QA/QC Plan	Discharger	Develop prior to implementation of an ATS system
Construction Site Monitoring Program (CSMP)	Discharger	In SWPPP as an appendix or chapter
NAL Exceedance Report	Discharger	Submitted upon request by the Regional Board
Notice of Termination (NOT)	LRP	Upon completion of construction or change in ownership

Permit Registration Documents (PRDs)	LRP	Submitted for permit coverage
– Notice of Intent (NOI)	LRP	In PRD package
– Risk Assessment	LRP	In PRD package
– Site Map	LRP	In PRD package
– Storm Water Pollution Prevention Plan (SWPPP)	QSD	In PRD package
– Certification Statement	LRP	In PRD package
– Post-Construction Calculations	LRP	In PRD package (if applicable)
– ATS System Design	LRP	In PRD package (if applicable)
– Soil Particle Size Analysis	LRP	In PRD package (if applicable)
– Annual Fee	Discharger	In PRD package
Rainfall Erosivity Waiver Certification	LRP	In PRD package (if applicable)

34. **Do all projects need to submit an Annual Report? (T) (L) (C)**
Annual Reports must be submitted by projects that are enrolled under 2009-0009-DWQ for more than one continuous three month period. The Annual Reports will be submitted electronically in SMARTS. Annual Reports are due to the State Water Board on September 1 of each year with a July 1 through June 30 compliance year.

For projects active for more than one continuous three month period, and that complete construction prior to September 1, an Annual Report will still be required and must be submitted electronically in SMARTS prior to notice of termination (NOT) submittal.

35. **Where can I get guidance for on-site rain gauge installation and reading? (T) (L) (C)**
The Surface Water Ambient Monitoring Program (SWAMP) has a Guidance Compendium for Watershed Monitoring and Assessment. Section 5.1.1 of this Compendium contains guidance for Rainfall Monitoring.\

36. **I would like to design a sediment basin for my project. The 2009-0009-DWQ permit requires sediment basins to be designed according to the method provided in CASQA's Construction BMP Guidance Handbook. Do I need to purchase the handbook in order to design a sediment basin for my project? (T) (L) (C)**
No. It is not necessary to purchase CASQA's Construction BMP Guidance Handbook in order to design a sediment basin for a project. Get a free copy of the Sediment Basin Fact Sheet (SE -2).

37. **At what point will the Attachment F, Active Treatment System requirements apply on my site? (T) (L) (C)**
The requirements in Attachment F only apply when an Active Treatment System (ATS) is implemented on a project site. ATS is defined in the 2009-0009-DWQ permit as "A treatment system that employs chemical coagulation, chemical flocculation, or electrocoagulation to aid in the reduction of turbidity caused by fine suspended sediment."

The application of chemicals on disturbed soil areas is not considered ATS. This Best Management Practice (BMP) is used for the purpose of erosion control.

38. **Will a risk re-calculation be required if my project extends past the original construction end date specified? (T) (L) (C)**
Yes, all projects that extend past their original construction end date will be required to electronically re-calculate their risk level in SMARTS.

39. **When will effluent monitoring be required at my site? (T) (L) (C)**
Effluent monitoring is required for Risk Level 2 & 3 (LUP Type 2 & 3) project sites. The CGP requires effluent monitoring of discharges resulting from a qualifying rain event (defined as one half inch or greater). A rain event can only conclude when there is a minimum of 48 hours of dry weather. There will be some instances where a rain event may not reach on half inch until days 2 or 3 (or later). Dischargers should take grab samples any time there is a discharge observed, and then check the rain event size at the conclusion. There will be some instances where rain events larger than one half inch will not produce discharge.
Effluent Monitoring Results must be submitted electronically through the SMARTS system. Click for Instructions.

40. **In Appendix 3 - Bioassessment Monitoring Guidelines, various links are outdated. How can I access the correct information/pages? (T) (L) (C)**
See the revised version of Appendix 3 - Bioassessment Monitoring Guidelines with updated links.

41. **Attachment D – Risk Level 2 (page 19) and Attachment E – Risk Level 3 (page 20) NAL Exceedance Report requirements state, "In the event that any effluent sample exceeds an applicable NAL, dischargers shall electronically submit all storm event sampling results…" Is this correct? (T) (L) (C)**
This requirement applies to a daily average value not a single effluent sample.

42. **What is the requirement for a pre-storm event visual inspection? (T)(L)(C)**
The CGP requires visual monitoring for Qualifying Rain Events of 0.5 inch or more. The size of a rain event cannot be predicted so an adequate trigger for a pre-storm event visual inspection would be same trigger for the Rain Event Action Plan (REAP). 50 percent or greater probability of producing precipitation based on the National Weather Service Forecast Office (NOAA).

43. **Provision XIII.A.4 of the CGP requires the discharger to "preserve the pre-construction drainage density (miles of stream length per square mile of drainage area) for all drainage areas within the area serving a first order stream or larger stream and ensure that post-project time of concentration is equal or greater than pre-project time of concentration." How does a discharger comply with these requirements? (T)**
To meet the drainage density requirement, dischargers shall maximize sheet flow and use an "open" drainage system (i.e., swales, ditches, vegetated channels) for concentrated flows. Sheet flow areas, swales, ditches, and vegetated channels are not considered streams for the purpose of calculating drainage density.

    To meet the time of concentration requirement, dischargers shall use the recommended method in the applicable local hydraulic design or flood control manual. If a recommended method does not exist, the discharger shall use the time of concentration calculation method contained in the Natural Resources Conservation Service's Technical Release 55: Urban Hydrology for Small Watersheds.

44. **Will daily average pH values be calculated linearly or through the logarithmic method? (T) (L) (C)**
See Technical Bulletin 2013.1

45. **Watershed Sediment Risk is expressed in units of tons/acre. Why doesn't project site size factor into Watershed Sediment Risk? (T) (L) (C)**
The Revised Universal Soil Loss Equation (RUSLE) is used to calculate watershed sediment risk. The RUSLE was originally developed to calculate sheet and rill erosion rate in tons/acre/project duration. The Water Board chose to keep with the original intent of the RUSLE and not introduce an arbitrary project size threshold to develop risk categories expressed on tons/project duration.

46. **Assuming my project lasts at least one year, do I need to implement erosion and sediment controls year round, even though a small percentage of my RUSLE Rainfall-Runoff Erosivity Factor (R factor) occurs during the summer months? (T) (L) (C)**
An effective combination of erosion and sediment controls, as defined in the permit, must be deployed year round.

47. **My local Regional Board is questioning the R-factor calculated for my project using EPA's erosivity index calculator. Can they do this? (T) (L) (C)**
The Regional Board has the authority to question any aspect of the sediment risk calculation, including the R-factor used in determining Watershed Sediment Risk. The RUSLE2 computer program can also be used to calculate the R-factor and in many cases yields more accurate values than those generated from the EPA Erosivity Calculator.

48. **Where do I submit complaints about a Qualified SWPPP Developer (QSD) or a Qualified SWPPP Practitioner (QSP)? (T) (L) (C)**
Complaints may be submitted through the Cal/EPA Environmental Complaint form.

49. **Can straw wattles be left at a project site applying for a Notice of Termination (NOT)?**
Only biodegradable wattles containing no plastic can remain on a site applying for a NOT. Wattles containing plastic netting (including plastic specified as photo-degradable) become "trash" in the environment and/or a trap for wildlife. These are also considered "construction materials and waste" and must be disposed per Section II.D.1.d of the CGP.

50. **If a project is located within an area that is subject to post-construction standards of an active Phase I or Phase II MS4 permit, but the MS4 approved the project prior to the MS4 having Phase I or Phase II post-construction standards, does that project have to comply with the post-construction standards of the CGP (see Section XIII)?**
Yes. As of September 2, 2012, all projects that are enrolled under the CGP are either subject to the post-construction standards of the CGP or of a Phase I or Phase II MS4 permit. Therefore, if a project was approved by the MS4 prior to the MS4 having post-construction standards adopted pursuant to a Phase I or Phase II permit, then the project would need to comply with post-construction standards of the CGP.

Questions or comments about the 2009-0009 DWQ Permit?

- Please email stormwater@waterboards.ca.gov or phone (866) 563-3107.

Quick links to related (2009-0009 DWQ) Construction FAQs

- Caltrans Construction | Linear Construction

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The State Water Board is one of six environmental entities operating under
the authority of the California Environmental Protection Agency
Cal/EPA | ARB | CalRecycle | DPR | DTSC | OEHHA | **SWRCB**