

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2017-0063**

**ADOPTING THE CANNABIS CULTIVATION POLICY –
PRINCIPLES AND GUIDELINES FOR CANNABIS CULTIVATION**

WHEREAS:

1. The State Water Resources Control Board (State Water Board or Board), in consultation with the California Department of Fish and Wildlife (CDFW) and California Department of Food and Agriculture (CDFA), shall ensure that the individual and cumulative effects of water diversion and discharge associated with cannabis cultivation do not affect instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability. (Business and Professions Code, section 19332(d).)
2. The State Water Board, in consultation with CDFW, shall adopt principles and guidelines (requirements), as part of a state policy for water quality control pursuant to the Porter-Cologne Water Quality Control Act, for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flow. These requirements may include, but are not limited to: instream flow objectives, limits on diversions, and requirements for screening of diversions and elimination of fish passage barriers. (Water Code section 13149(a)(1)(A) and (b)(2).)
3. The State Water Board, in consultation with CDFW, shall adopt interim requirements pending the development of long-term requirements, and the Board may update the interim principles and guidelines as it determines reasonably necessary. (Water Code section 13149(a)(2).)
4. The requirements established by the State Water Board shall include measures to protect springs, wetlands, and aquatic habitats from the negative impacts of cannabis cultivation. The State Water Board may include requirements that apply to groundwater extractions where the State Water Board determines those requirements are reasonably necessary. (Water Code section 13149(a)(1)(A) and (a)(B)(2).)
5. The State Water Board has an affirmative duty to take the public trust resources, including fisheries, into account in the planning and allocation of water resources. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.)
6. The State Water Board also has the authority under article X, section 2 of the California Constitution and Water Code section 100 to prevent the waste or unreasonable use, unreasonable method of use, or the unreasonable method of diversion of all waters of the state. Water Code section 275 directs the State Water Board to “take all appropriate proceedings or actions before executive, legislative, or judicial agencies...” to enforce the constitutional and statutory prohibition against waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, commonly referred to as the reasonable use doctrine. The reasonable use doctrine applies to the diversion and use of both surface water and groundwater, and it applies irrespective of the type of water right held by the diverter or user. (*Peabody v. Vallejo* (1935) 2 Cal.2d 351.) What constitutes reasonable water use is dependent upon the totality of the circumstances presented and may vary based on changing circumstances. (*Environmental Defense Fund, Inc. v. East Bay Mun. Utility Dist.* (1980) 26 Cal.3d 183, 194.)

7. The State Water Board, in consultation with CDFW, CDFA, and Regional Water Quality Control Boards (Regional Water Boards), has developed the Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation (Policy) in accordance with Water Code section 13149. The Policy establishes interim principles and guidelines for cannabis cultivation activities to protect water quality and instream flows. The geographic scope of the Policy encompasses the entire state with priority regions established for areas with streams bearing anadromous habitat.
8. State Water Board staff held eight public meetings in August through October 2016 to solicit early input from interested parties regarding development of the draft Policy. State Water Board staff also participated in more than 15 other events to share information and solicit comments on the Policy.
9. The Policy will be implemented through applications to appropriate water, water right registrations, waste discharge requirements, a general water quality certification, and CDFA-issued cannabis cultivation licenses. CDFA is required to include in any cannabis cultivation license conditions requested by CDFW and the State Water Board to:
 - (a) ensure that individual and cumulative effects of diversion and discharge associated with cultivation do not affect instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability;
 - (b) ensure that cultivation does not negatively impact springs, riparian habitat, wetlands, or aquatic habitat;
 - and (c) otherwise protect fish, wildlife, fish and wildlife habitat, and water quality.The conditions shall include, but are not limited to, the principles, guidelines, and requirements established by the State Water Board and CDFW pursuant to Water Code section 13149. (Business and Professions Code, section 26060.1(b)(1).)
10. The Policy contains guidelines for evaluating whether a cannabis cultivation site may affect instream flows and water quality needed for the protection of aquatic habitat. It prescribes protective criteria that limit the season of diversion, establish minimum flows at specific flow gages, and establish requirements related to water diversion and waste discharge. As an alternative to the criteria specified in the Policy, the Policy allows site-specific studies to be conducted to evaluate whether different protective criteria could be applied. The Policy provides for a watershed-based approach to evaluate the cumulative effects of multiple diversions on instream flows within a watershed as an alternative to evaluating water diversion projects on an individual basis. Enforcement requirements contained in the Policy include a framework for compliance assurance through existing water rights and water quality programs, and descriptions of available enforcement actions and procedures.
11. Pursuant to Water Code section 13149(b)(1), the State Water Board's adoption of the Policy is deemed to be within section 15308 of Title 14 of the California Code of Regulations (Actions by Regulatory Agencies for Protection of the Environment), provided the action does not involve relaxation of existing streamflow standards. The requirements of the Policy do not allow for a relaxation of existing streamflow standards. A Notice of Exemption will be filed with the Office of Planning and Research within five days of the State Water Board's adoption of the Policy.

12. In accordance with Water Code sections 13149 and 13147, the State Water Board posted a draft of the Policy for 60 days of public comment. On July 7, 2017, the State Water Board provided public notice, including a copy of the draft Policy and Staff Report, that the State Water Board would consider adoption of the Policy at the Board's regularly scheduled October 17, 2017 public meeting. State Water Board staff held public information meetings on the draft Policy on July 20 (Eureka) and July 27 (Sacramento). The 60-day comment period for the draft Policy ended on September 6, 2017.
13. The State Water Board received 74 written comment letters and verbal comments from five individuals at the State Water Board's August 2, 2017 workshop. The State Water Board has carefully considered all comments and testimony received on the proposed Policy, responses to comments, and all of the other evidence in the administrative record.

THEREFORE BE IT RESOLVED THAT:

The State Water Board

1. Adopts the [Policy](#), including all attachments;
2. Directs staff to submit the Policy to the Office of Administrative Law (OAL) for final approval;
3. Authorizes the Executive Director to make any minor, non-substantive corrections to the language of the Policy or supporting documentation if, during the approval process, OAL determines they are needed for clarity or consistency; and
4. Directs staff to continue to work with CDFW, CDFA, Regional Water Boards, tribes, the regulated community, and other interested parties to evaluate and implement updates to the Policy, including updates to the Policy's instream flow requirements, and report back to the Board in no less than two years regarding the Policy's implementation and any updates thereto.

CERTIFICATION


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 17, 2017.

AYE: Chair Felicia Marcus
Vice Chair Steven Moore
Board Member Tam M. Doduc
Board Member Dorene D'Adamo
Board Member Joaquin Esquivel

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board