

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2019-0007**

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

WHEREAS:

1. Section 13149 of the Water Code directs that the State Water Resources Control Board (State Water Board or Board), in consultation with the California Department of Fish and Wildlife (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. (Wat. Code, § 13149(a)(1)(A), (b)(2).)
2. 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. (Wat. Code, § 13149(a)(2).)
3. 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. (Wat. Code, § 13149 (a)(1)(A), (a)(2).)
4. 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.)
5. 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.)
6. On October 17, 2017, the State Water Board adopted [Resolution No. 2017-0063](#) adopting the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Policy), which was developed in consultation with CDFW, California Department of Food and Agriculture (CDFA), and the Regional Water Quality Control Boards (Regional Water Boards) in accordance with Water Code section 13149. The Cannabis Policy became effective upon Office of Administrative Law (OAL) approval on December 18, 2017.

7. The Cannabis Policy establishes interim requirements for cannabis cultivation activities to protect water quality and instream flows. The geographic scope of the Cannabis Policy encompasses the entire state with priority regions established for areas with streams bearing anadromous habitat.
8. While the Cannabis Policy is self-implementing, it is primarily implemented through applications to appropriate water, water right registrations, waste discharge requirements, waiver of 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 the State Water Board and CDFW 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;
 - (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. (Bus. & Prof. Code, § 26060.1(b)(1).)
9. The Cannabis 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 Cannabis Policy, the Cannabis Policy allows site-specific studies to be conducted to evaluate whether different protective criteria could be applied. The Cannabis 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 Cannabis Policy include a framework for compliance assurance through existing water rights and water quality programs, and descriptions of available enforcement actions and procedures.
10. In accordance with Water Code sections 13149 and 13147, the State Water Board posted a draft of the proposed updates to the Cannabis Policy for 60 days of public comment. On September 28, 2018, the State Water Board provided public [notice](#), including a copy of the draft proposed updates to the Cannabis Policy and Staff Report, that the State Water Board would consider adoption of proposed updates to the Cannabis Policy at the Board's regularly scheduled February 5, 2019 public meeting. The proposed updates to the Cannabis Policy focus on tribal buffers, requirements for conditionally exempt indoor cultivation sites, and onstream reservoirs, with other minor cleanup and clarifications. The State Water Board held a workshop on the proposed updates in Sacramento on October 16, 2018, and a staff informational workshop in Fortuna on November 8, 2018. The 60-day comment period for the proposed updates to the Cannabis Policy ended on November 27, 2018.
11. In response to comments on the proposed updates to the Cannabis Policy, the State Water Board determined that clarification was needed regarding certain Cannabis Policy winterization requirements. Accordingly, on January 10, 2019, the State Water Board released a [notice](#) of proposed revisions to the winterization requirements of the Cannabis Policy for a 15-day public comment period that concluded on January 25, 2019.
12. The State Water Board received written and oral comments on the proposed updates to the Cannabis Policy. The State Water Board carefully considered all comments and testimony received on the proposed updates to the Cannabis Policy, responses to comments, and all the other evidence in the administrative record.

13. Pursuant to Water Code section 13149(b)(1), the State Water Board's adoption of the Cannabis Policy and updates or revisions thereto, are 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 Cannabis 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 Cannabis Policy.

THEREFORE, BE IT RESOLVED THAT:

The State Water Board

1. Adopts the [proposed updates to the Cannabis Policy, including all attachments](#);
2. Directs staff to submit the proposed updates to the Cannabis Policy to OAL for final approval; and
3. Authorizes the Executive Director or designee to make any minor, non-substantive corrections to the language of the Cannabis Policy or supporting documentation if, during the approval process, OAL determines they are needed for clarity or consistency.

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 February 5, 2019.

AYE: Chair Felicia Marcus
Board Member Dorene D'Adamo
Board Member E. Joaquin Esquivel
Board Member Sean Maguire

NAY: None

ABSENT: Board Member Tam M. Doduc

ABSTAIN: None



Jeanine Townsend
Clerk to the Board