

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF JANUARY 28, 2016

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ITEM NUMBER: 12

SUBJECT:Status of Water Board Programs and Regulations to Protect Water Quality from Cannabis Cultivation Facilities Program

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DISCUSSION

This is an information item to update the Central Coast Water Board and the public about the State Water Resources Control Board (State Water Board) activities to date to control and regulate waste discharges and water quality impacts from cannabis cultivation facilities.

In July 2014, the Strategy for Regulation and Enforcement of Unauthorized Diversions; Discharges of Waste to Surface and Groundwater Caused by Marijuana Cultivation (Strategic Plan) was finalized. The Strategic Plan was a collaborative effort of the State Water Board, Central Valley Regional Water Quality Control Board (Central Valley Regional Board), the North Coast Regional Water Quality Control Board (North Coast Regional Board) and the California Department of Fish & Wildlife (CDFW).

In June 2014 the Legislature approved the Governor's proposed budget which provided 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 & Wildlife was provided with 7 positions and given direction "to investigate & enforce violations of illegal streambed alterations and the Endangered Species Act associated with marijuana production."

With these positions and with support from the State Water Board's Division of Water Rights (Division), the agencies formed a task force and are working collaboratively to reduce environmental damage caused by cannabis cultivation. Activities which cause harm to waters of the State and threaten or damage aquatic habitat and groundwater, include:

- Grading, terracing & road construction, causing erosion & sediment in streams;
- Deforestation;
- Illegally using rodenticides, fungicides, herbicides & insecticides;
- Using soil amendments & fertilizers where run off to surface waters may occur;
- Discarding trash & haphazardly managing human waste;
- Storing hazardous materials such as diesel & gasoline;
- Diverting water from streams without a permit.

The goals of the multiagency partnership are four-fold: Multi-Agency Coordination; Enforcement; Development of a Regulatory Program; and Education and Outreach.

Multi-Agency Coordination

Throughout calendar year 2015, the State Water Board's Office of Enforcement partnered with CDFW, the North Coast Regional Board, the Division, and local law enforcement and agencies to conduct inspections in high priority watershed, selected as such because they contain sensitive species and/ or are used as a municipal water source. Watershed targeted, include Sproul Creek in Humboldt County; Indian Creek, Browns Creek, and Hayfork Creek in Trinity County; and Ryan Creek, Jones Creek, and Indian Creek in Mendocino County.

These agencies also collaborated with the Yurok Tribe and the Humboldt County Sheriff's Department on a week-long effort to address environmental damage from cannabis cultivation in and around the Yurok tribal boundaries.

At the same time, the Central Valley Regional Board has partnered with CDFW on numerous efforts in Shasta County, with a large effort in the Trinity Alps. The Central Valley Regional Board partnered with both CDFW and the Division for inspections in Tehama County.

The Central Valley Regional Board has also developed a Marijuana Working Group that includes legislators; federal, state, and local agencies; non-governmental organizations; the cultivation community; and consulting firms.

Enforcement

The State and Regional Water Boards (collectively Water Boards) and CDFW conduct both consent- and warrant-based inspections for the purpose of identifying Fish and Game Code and Water Code violations. CDFW typically will issue a Notice of Violation if a violation is found and has served more than 50. CDFW may pursue administrative action (several are pending), or refer a case to the district attorney, circuit prosecutor, or attorney general (several cases are pending). The Water Boards write and issue an inspection report. The Water Boards have followed up by issuing Notices of Violation, Cleanup and Abatement Orders, and Administrative Civil Liabilities seeking more than \$500,000 in liability. The Central Valley Regional Board imposed a \$297,400 liability against a property owner and local contractor for discharges of sediment to surface waters that provide habitat to aquatic organisms. The State Water Board's Division of Water Rights reached a \$35,000 settlement with a water hauler for an unauthorized diversion in Hayfork Creek.

Development of a Regulatory Program

On August 20, 2015, the North Coast Regional Water Quality Control Board adopted Order No. R1- 2015-0023, which serves as a "Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region" (Order). The Order creates a tiered enrollment structure. Tier 1 is for small, low-threat discharges. Specifically, slopes are no more than 35%; cultivation areas are no more than 5,000 square feet; no cultivation areas or associated facilities are located within 200 feet of a surface water (i.e., wetland, Class I, II, or III streams); and Tier 1 Dischargers do not directly divert surface water from May 15 through October 31. Tier 2 is for sites that don't meet the criteria of Tier 1 and where operations present a higher threat to water quality and water resources. Tier 3 is for sites requiring cleanup, restoration, and/or remediation. The Order also establishes a Third Party Program and requires individuals growing more than 2,000 square feet of cannabis to enroll under the Order by February 15, 2016. More information on this North Coast Regional Board's Cannabis Cultivation Waste Discharge Regulatory Program can be found here:

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

On October 2, 2015, the Central Valley Regional Water Quality Control Board adopted Order No. R5-2015-0113, which serves as a "Waste Discharge Requirements General Order for Discharges of Waste Associated with Medicinal Cannabis Cultivation Activities" (R5 Order). The R5 Order also created a tiered enrollment structure. Tier 1 (Low-Threat) is for cannabis cultivators whose cultivation activities are located on slopes less than 30%, occupy and/or disturb less than ¼ acre, and are not located within 200 feet of an aquatic life bearing water body. Tier 2 (Moderate Threat) is for cannabis cultivators whose cultivation activities are located on slopes less than 30%, occupy and/or disturb less than an acre and no more than 50% of the cultivator's/landowner's parcel(s), and are not located within 200 feet of an aquatic life bearing water body. Tier 3 (Elevated Threat) is for cannabis cultivators whose cultivation activities do not qualify as Tier 1 or Tier 2 operations. Meaning that their cultivation operation is located on slopes greater than 30%, occupies and/or disturbs more than an acre or more than 50% of the cultivator's/landowner's parcel(s), or is located within 200 feet of an aquatic life bearing water body. The Order also establishes a Third Party Program. The conditions of the Order are effective immediately and more information can be found here: http://www.waterboards.ca.gov/centralvalley/water_issues/cannabis/index.shtml.

Education and Outreach

The State Water Board has taken the lead on developing outreach material for the potentially regulated public by developing fact sheets and a brochure about the Water Boards' regulatory authority and approach to regulating this industry. These have been translated into Spanish, Bulgarian, Hmong, and Russian. The State Water Board developed a flyer about illegal excavation and construction work, which was mailed out to approximately 1,500 licensed contractors in Northern California.

With significant input from staff at the Central Valley Regional Board, the State Water Board developed a flyer on Best Management Practices to mitigate pollution from cannabis cultivation activities.

The Central Valley Regional Water Board has developed its own outreach brochure that includes details about its General Waste Discharge Requirements.

Finally, the Department of Pesticide Regulation developed guidance on pesticide use on cannabis and legal pest management practices for cannabis cultivators in California.

Recent Legislation

AB 243 (Wood) Medical marijuana - This bill requires the State Water Board, along with the Department of Fish and Wildlife, to expand enforcement activities statewide to ensure the reduction of adverse environmental impacts related to medical marijuana cultivation. The bill would require each Regional Water Board (and would allow the State Water Board to engage in same) to address discharges of waste from the cultivation of medical marijuana and related activities. This bill would codify the current medical marijuana task force consisting of the State Water Board and the Department of Fish and Wildlife, and institute fee authority, penalties, and a unique identifier program (developed in coordination with the State Water Board) associated with licensing of medical marijuana cultivation.

AB 266 (Bonta) Medical marijuana – This bill would establish the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs. This new agency is tasked with administering a new licensing program for the cultivation, processing, distribution, and sale of medical cannabis. This bill also requires the Board of Equalization, in consultation with the Department of Food and Agriculture, to adopt a system for reporting the movement of commercial cannabis and cannabis products. This bill contains numerous provisions related to the licensing program, and associated funding and enforcement sections.

SB 643 (McGuire) Medical marijuana – This bill adds provisions for the administration of the proposed Bureau of Medical Marijuana Regulation and the proposed medical cannabis licensing system. This bill requires the Department of Food and Agriculture, in consultation with the State Water Board and the Department of Fish and Wildlife, to ensure that the cumulative effects of water diversions related to medical cannabis cultivation do not affect fish populations and natural flow variability.

Program Activities in the Central Coast Region

State Water Board staff from the Office of Enforcement will share their knowledge and plans about legislation and program activities as they apply to the Central Coast Region.