

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

STAFF REPORT FOR REGULAR MEETING OF JANUARY 26-27, 2017

Prepared January 3, 2016

ITEM NUMBER: 16

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

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This Action: **Informational**

SUMMARY

This staff report provides background information on water quality issues related to cannabis cultivation, cannabis legislation, statewide Water Board and other agency regulatory activities, and the status of the Central Coast Water Board's cannabis regulatory efforts.

The North Coast Regional Board and the Central Valley Regional Board were the first to receive staff positions for cannabis regulatory activities, and they subsequently developed their own cannabis regulatory orders. The Central Coast Water Board was recently allocated two staff members and is just beginning to develop information to support a cannabis regulatory program. The State Water Board plans to consider regulatory options, including a statewide general order, for cannabis regulation by January 2018. The details of how a State Water Board statewide general order would relate to existing or future Regional Board cannabis orders, and whether Regional Boards will be able to use their existing orders, are unknown at this time. One consideration for the State and Regional Boards is the issue of minimizing the number of orders that growers are subject to (permit streamlining). Currently, the Central Coast Water Board regulates thousands of growers under its current irrigated lands 2012 Ag Order. Many of these growers are considering growing cannabis, and requiring these growers enroll under two similar orders is counter to our general effort to implement permit streamlining. Another option is to add a cannabis module to our existing Ag Order, and maintain single order coverage and simplicity for growers of multiple agricultural commodities. Identifying the regulatory strategy and path forward are issues the Regional Boards and State Boards will have to address during 2017.

Meanwhile, Central Coast Water Board staff has developed draft program priorities and is moving forward with implementing near-term goals including stakeholder engagement at the local, regional, and state level, and a study of local zoning and land use ordinances adopted by local jurisdictions. During 2017 staff will also work with other Regional Boards and the State Water Board on the permit streamlining issue as the State and Regional Boards develop their cannabis regulatory strategy.

DISCUSSION

This is an information item to update the Central Coast Water Board and the public about State Water Resources Control Board (State Water Board) and Central Coast Water Board activities to control and regulate waste discharges and water quality impacts from cannabis cultivation. The Central Coast Water Board was first briefed about this program in January of 2016 and this briefing focuses on subsequent developments in this regulatory area.

Background

Since late 2013 and early 2014 the Water Boards and California Department of Fish and Wildlife (CDFW) have been working collaboratively to reduce environmental damage caused by cannabis cultivation. Cultivation related activities which cause harm to waters of the State and threaten or damage aquatic habitat and groundwater include:

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

Initially, the Water Boards were allocated 11 positions to develop a task force to address cultivation impacts and efforts were focused in Northern California where cultivation pressures are most intensive. More recently, the program has been expanded to 23 positions with two of those positions being located at the Central Coast Water Board. With the passage of the Medical Cannabis Regulation and Safety Act (MCRSA) (Assembly Bill Nos. 243, 266 & 643, 643 Stats. 2015, ch. 688, 689, and 719 as amended in 2016 by Sen. Bill No. 837 (Stats. 2016, ch. 32)) and Proposition 64 (Prop 64), the Water Board's Cannabis Regulation and Enforcement Unit (CREU) program will need to be implemented state-wide. Summaries of MCRSA and Proposition 64 are found below.

Medical Cannabis Regulation and Safety Act (MCRSA)

MCRSA 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 requires each Regional Water Board (or State Water Board) to address discharges of waste from the cultivation of medical marijuana and related activities.

The MCRSA establishes the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs. This new agency is tasked with administering a new licensing program for cultivating, processing, distributing, and selling 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.

The MCRSA requires the State Water Board, in consultation with California Department of Fish and Wildlife and California Department of Food and Agriculture, to ensure that 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 flows needed to maintain natural flow variability. The State Water Board, Division of Water Rights (Division), in consultation with California Department of Fish and Wildlife, is required to adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cultivation may have the potential to substantially affect instream flows. The Division is developing interim principle and guidelines for such diversions and intends to have interim principles and guidelines, and a small irrigation use registration program available to cannabis cultivators in priority watersheds by the end of 2017.

Proposition 64 (Prop 64)

In November 2016, California voters approved Prop 64, decriminalizing recreational marijuana use. It is now legal to personally cultivate up to six plants per residence, but commercial cultivation is still regulated by the 2015 laws, which limit cultivation to one acre of medical cannabis. In 2018 the laws will allow commercial, non-medical cultivation, and in 2023 the one-acre limit will no longer apply. Prop 64 imposes similar obligation on the Water Boards for recreational cannabis as the MCRSA imposes for medical cannabis.

For example, Prop 64 requires compliance with “*any requirement imposed to protect natural resources, including, but not limited to, protections for instream flow and water quality*” prior to an applicant being granted a license. (Bus. & Prof. Code section 26057.) Accordingly, commercial cannabis cultivators will need to obtain coverage under a state wide waste discharge requirements (WDR) permit prior to being issued a state license to cultivate. Furthermore, Prop 64 specifically requires that cultivation be conducted in accordance with state and local laws related to land conversion, grading, electricity use etc. and that CDFW, the State Water Board, the regional water quality control boards, and traditional state law enforcement agencies “*shall address environmental impacts of marijuana cultivation and shall coordinate when appropriate with cities and counties and their law enforcement agencies in enforcement efforts.*” (Bus. & Prof. Code section 26066.)

Cannabis Regulation and Enforcement Unit (CREU) Program Components

The CREU and its multiagency partnership use a four-fold approach to address adverse impacts from cultivation: multi-agency coordination, enforcement, development of a regulatory program, and education and outreach

Multi-Agency Coordination

In the initial task force area, the State Water Board’s Office of Enforcement partnered with North Coast Regional Board, the Central Valley Regional Board, CDFW, the Division of Water Rights, and local law enforcement agencies to jointly prioritize enforcement and regulatory efforts. The collaboration includes conducting joint inspections in high-priority watersheds, selected because they contain sensitive species or are used as a municipal

water source. Collaboration with local governments, tribes, and law enforcement officers has also been essential to success of this program in the initial task force area.

With the passage of MCRSA and Proposition 64, there is now a need to collaborate more closely with state agencies such as Bureau of Medical Marijuana Regulation, Department of Food and Agriculture, and the Board of Equalization which tasked with licensing, regulating, and taxing cultivators and those programs must often be developed in coordination with Water Board and CDFW programs.

Enforcement

The State and Regional Water Boards (collectively Water Boards) and CDFW conduct both consent-based and warrant-based inspections of cultivation sites for the purpose of identifying and correcting Fish and Game Code and Water Code violations. Since the CREU program began in 2014 the Water Boards have participated in joint inspections of over 150 properties in more than six counties. These inspections documented many water rights, water quality, and Fish and Wildlife code violations, resulted in a significant increase in voluntary compliance, and where voluntary compliance wasn't obtained, the issuance of formal enforcement actions.

Development of a Regulatory Program

Both the North Coast Water Board and the Central Valley Water Board have adopted waste discharge regulatory programs for cannabis cultivation. Both Regional Boards currently have in excess of 500 enrollees in each of those programs and a backlog of applications to those programs waiting to be processed.

The North Coast Water Board has adopted Order No. R1- 2015-0023, *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* (R1 Order). The R1 Order creates a tiered enrollment structure. Tier 1 is for small, low-threat discharges where 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 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 R1 Order also establishes a third-party program and required individuals growing more than 2,000 square feet of cannabis to enroll under the order by February 15, 2016. More information on the 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

The Central Valley Water Board adopted Order No. R5-2015-0113, *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 operations are located on slopes greater than 30%, occupy and/or disturb more than an acre or more than 50% of the cultivator's/landowner's parcels, or are located within 200 feet of an aquatic-life-bearing water body. The Order also establishes a third-party program. The conditions of the Order were effective immediately and more information can be found here:

http://www.waterboards.ca.gov/centralvalley/water_issues/cannabis/index.shtml.

The State Water Board, Division of Water Quality (DWQ), has been tasked with the development of statewide general waste discharge requirements (general WDR) for cannabis cultivation sites to address the non-point source discharge problems associated with cultivation. DWQ is currently planning on bringing a proposed order to the State Water Board by January 2018. DWQ intends to release a draft for public comment in mid-June 2017, prior to presenting it to the State Board for consideration.

Education and Outreach

Education and outreach is also an important component of bringing the cannabis cultivation industry into this new regulatory program. All of the entities involved in this CREU program have been active in community outreach events to provide information on this new program. The State Water Board has taken the lead on developing written 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 has also 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 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 the R5 Order. Finally, the Department of Pesticide Regulation developed guidance on pesticide use on cannabis and legal pest management practices for cannabis cultivators in California.

Program Activities in the Central Coast Region

The Central Coast Water Board hired an engineer, Leah Lemoine, who started December 19, 2016, to coordinate cannabis cultivation activities in the region.

Staff has developed draft program priorities, consistent with the CREU, which include the following four categories: Multi-agency stakeholder engagement, enforcement, permitting, and outreach and education. Near and mid-term action items include the following:

- Contacting stakeholders at the state and regional level including the Office of Enforcement, Office of Water Quality, North Coast Water Board, the Central Coast Water Board, the Department of Water Rights, CDFW and local jurisdictions within the Central Coast Water Board jurisdictional area to begin building a coalition that will work together to coordinate and prioritize regulatory and enforcement efforts in the Central Coast region.

- A study of local zoning and land use ordinances adopted by local jurisdictions with the region is underway and will be used as a tool in determining where to focus regulatory efforts and to identify potential partners. Initial research indicates that the counties of Santa Cruz, Monterey, Santa Barbara and San Luis Obispo will be the most active in terms of commercial cultivation. A summary of local ordinances can be found in Table 1.
- Central Coast Water Board staff will work with other Regional Boards and the State Board on the cannabis permitting issues in 2017, including the issue of permit streamlining, where we simplify and minimize the regulatory burden on growers.

As part of this agenda item, 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.

Table 1: Summary of County and City Ordinances Related to Cannabis Cultivation in Central Coast Region

County	Ordinance Name	Date Passed	Summary	Regulatory Status of Commercial Cannabis Cultivation
Santa Cruz County	Ordinance Regarding Licenses for the Commercial Cultivation of Medical Cannabis	Proposed July 19, 2016; expected to be passed in Fall 2017 pending EIR	Ordinance establishes Medical Cannabis Cultivation Licensing Program. Seven types of licenses available with a maximum canopy up to 22,000 sq. ft., depending on type. Qualified patients may cultivate for personal use.	Permitted
	Moratorium on non-medical use and cultivation of marijuana	December 13, 2016	No cultivation or use for non-medical purposes.	Not permitted; Santa Cruz Board of Supervisors will revisit the issue at their February 28, 2017 meeting.
Monterey County	Ch. 7.90 Commercial Medical Cannabis Permits	July 19, 2016	Commercial cannabis activity must have a permit (exempt are qualified patients and qualified caregivers growing <100 sq. ft.). Licenses valid for one year. Indoor cultivation only, industrial sites, up to 22k sq ft.	Permitted
San Luis Obispo County	Interim Zoning/Urgency Ordinance Establishing Moratorium on the Cultivation of Cannabis Except Certain Exceptions (Ordinance No. 3334)	September 20, 2016	Established prohibition on cultivation on all land use categories. Moratorium in place until September 19, 2017 and can be extended for an additional year. There is an exception for existing cultivation sites that were legal under County and CA state law before August 23, 2016. There is a second exemption for qualified patients (6 plants (<100 sq. ft.) and primary caregivers (30 plants, < 500 sq. ft.)	Legal noncompliant operations will remain legal, but expansion is prohibited. The County estimates as many as 800 to 1,000 cultivation sites, excluding very small personal grows.
Santa Barbara County	Article X. - Medical Marijuana Regulations	January 19, 2016	Medical cannabis cultivation prohibited except for personal medical use by a qualified patient or primary caregiver. Cultivation must occur at the residence of the patient or care giver and cannot exceed 100 sq. ft. There is an exception for existing cultivation sites that were legal under CA state law before January 19, 2016.	Legal noncompliant operations will remain legal, but expansion is prohibited under County zoning ordinance.
Santa Clara County	Ordinance Code Regulating Medicinal Marijuana Cultivation (Ordinance No. NS-300.884)	October 20, 2015	Medical cannabis cultivation permitted by qualified patient or primary caregiver at a residence where the qualified patient or primary caregiver resides. Indoor cultivation limited to 50 sq. ft. Outdoor cultivation limited to 12 plants.	Not permitted; Personal cultivation ok.
San Mateo County	Medical Marijuana Regulation	2009	Regulates collective growing for medical use. Non-commercial collectives permitted, although no licenses have been issued.	Not permitted
	Temporary Moratorium on Marijuana Activity	December 6, 2016	Temporary ban on outdoor cultivation until January 2018	Temporary ban on all outdoor cultivation.
Ventura County	Ban of Cultivation and Sale of Medical Cannabis	December 14, 2015	Ban on cultivation and sale of medical marijuana. Patients and caregivers can grow on patient's behalf and form noncommercial collectives.	Not permitted
San Benito County	No ordinance		Potential ordinance was discussed in December 9, 2015 County Board of Supervisors meeting, but nothing has been proposed.	No regulation

City	Ordinance Name	Date Passed	Summary	Regulatory Status of Commercial Cannabis Cultivation
<i>Monterey County</i>				
Salinas	Ordinance No. 2566	January 26, 2016	Permits up to 12 cannabis businesses which may be cultivation, dispensaries, manufacturing or delivery.	Permitted
Greenfield	5.28 Medical Marijuana Facilities Regulatory Permit	January 12, 2016	Allows for cultivation in industrial zones, subject to licensing and permitting.	Permitted
King City	17.03 Medical Cannabis Activity	January 2016	Allows for dispensary, cultivation, and manufacturing on designated zoned areas.	Permitted
Soledad	Interim Urgency Ordinance No. 704	December 7, 2016	Ban on non-medical marijuana	All non-medical use and grows not permitted.
	Ord. 695, 17.38.360 Medical Marijuana Regulations	February 3, 2016	Complete and total prohibition of dispensaries, cultivation (indoor and out), and deliveries.	Not permitted
<i>San Luis Obispo County</i>				
Santa Maria	Ordinance No. 216-18	August 17, 2016	Prohibits the manufacturing, processing, testing, storing of cannabis and cannabis products for medical or non-medical use.	Not permitted
Paso Robles	Ordinance No. 1036 N.S.	November 9, 2016	City-wide prohibition of all activities from cultivation to point of sale. Exception for indoor cultivation for personal use, but must take place in an accessory structure and grower must obtain a license. Marijuana delivery service is permitted.	Not permitted; Personal cultivation ok.
Pismo Beach	Ord. O-2016-009, Ch. 9.38 Marijuana	January 2016	Planting, growing, harvesting, drying or processing of cannabis not is permitted.	Not permitted
	Marijuana Urgency Ordinance	November 16, 2016	45-day temporary ban on production and sale of cannabis.	All cannabis temporarily banned.
<i>Santa Barbara County</i>				
Solvang	Urgency Ordinance 16-319	September 29, 2016	Bans all marijuana businesses. In place until September 12, 2017.	Not permitted
Guadalupe	18.74.040/070 Prohibition of Marijuana Cultivation	January 2016	Cultivation prohibited, including primary caregivers and qualified patients. Dispensaries are not permitted.	Not permitted; includes ban on cultivation for personal use.
Carpinteria	Ordinance No. 707	January 25, 2016	Cultivation prohibited, except for primary caregivers and qualified patients. Dispensaries are not permitted. Deliveries permitted by qualified caregivers to a qualified patient.	Not permitted; Personal cultivation ok.
Lompoc	Ordinance No. 1621 (16)	January 1, 2015	Ban on dispensaries and commercial cultivation of medical marijuana. Cultivation for personal use by qualified patients and deliveries are allowed.	Ban on commercial cultivation. Cultivation for personal use permitted.
Goleta	Ch. 5.09 Marijuana Delivery Regulations	January 2016	Delivery permitted with license. Ban on cultivation for commercial use.	Not permitted, except for two existing growers.
<i>Santa Cruz County</i>				
Santa Cruz	Ch. 6.90 Personal Medical Marijuana Use	March 9, 2010	Cultivation permissible for individuals in possession of a growing certificate	Not permitted; Personal cultivation ok.
Watsonville	Ordinance No. 1326-16	January 27, 2016	Commercial cultivation permitted, indoor, mixed-light or nursery, up to 10,000 sq. ft.	Permitted

CONCLUSION

In accordance with MCRSA and Prop 64, Central Coast Water Board is taking steps to control and regulate waste discharges and water quality impacts from cannabis cultivation. Two staff members were recently hired to facilitate the coordination and prioritization of cannabis regulatory and enforcement efforts in the Region. Staff developed draft program priorities and is moving forward with implementing near-term goals including stakeholder engagement at the local, regional, and state level and a study of local zoning and land use ordinances adopted by local jurisdictions. Central Coast Water Board staff will work with other Regional Boards and the State Board on the cannabis permitting issues in 2017, including the issue of permit streamlining, where we attempt to simplify and appropriately minimize the regulatory burden on growers.