



October 7, 2016

State Water Resources Control Board
Division of Water Rights
Cannabis Interim Flow Unit
Attention: Erin Ragazzi and Dan Schultz
P.O. Box 2000
Sacramento, CA 95812-2000

RE: Comments on the State Water Resources Control Board Cannabis Cultivation and Water Rights Program

Dear Ms. Raggazi and Mr. Shultz,

Thank you for the opportunity to provide comments on the State Water Resources Control Board Cannabis Cultivation and Water Rights Program. The Nature Conservancy, Trout Unlimited, and California Trout have jointly prepared the following comments.

Our organizations are very concerned about the significant environmental impacts that have resulted from years of unregulated marijuana cultivation; we are particularly troubled by impacts to sensitive coastal streams and the species that depend on them. In response, we have been deeply involved at the state and regional levels in the push for comprehensive regulation of the medical marijuana industry. We are also working to secure adequate funding for the enforcement of environmental laws, clean-up of past impacts, and restoration of damaged lands.

We actively supported SB 837 which provided specific new legal authorities for the State Water Resources Control Board (SWRCB) and the Department of Fish and Wildlife (CDFW) to withhold issuance of medical marijuana cultivation permits unless specific water reporting, monitoring, and measuring of cultivation impacts are built into the permit conditions. SB 837 also directed the SWRCB to establish instream flow standards for marijuana cultivation on an accelerated basis. The new authority breaks through existing barriers to developing flow standards by directing the SWRCB to set interim streamflow standards based on the best available science, with a clear process for public input.

Our organizations believe this authority is an important tool that will strengthen the ability of SWRCB and CDFW to protect fish and wildlife by restricting diversion for cannabis cultivation, particularly during the dry season. At the same time, this authority can provide an important path to compliance by enabling growers to obtain permits to divert water to storage in cases where sufficient water is available during the wet season. We are grateful for the SWRCB leadership to establish streamflow standards and develop tools for working with growers who are interested in complying with the new medical marijuana cultivation laws.

Below are suggestions for the SWRCB's interim principles and guidelines for the diversion and use of water for commercial cannabis cultivation:

Consistency with the California Department of Fish and Wildlife Lake and Streambed Alteration Program pursuant to §1602 of the Fish and Game Code

SB 837 gives concurrent authority to both SWRCB and CDFW to set streamflow standards for streams affected by diversion for cannabis cultivation, and to regulate water diversion and use to meet those standards. It is important that the two agencies remain in communication and work together to ensure they adopt regulatory requirements that are congruent with each other, so that growers are not faced with two different sets of requirements.

Instream Flow Criteria

We encourage cumulative diversion analysis as part of an adaptive management program, particularly in watersheds with large cannabis growing footprints. We note that within the North Coast Policy area, flow criteria will need to be consistent with the North Coast Instream Flow Policy (Policy). While we recommend that the flow criteria selected by the SWRCB be conservative and protective, we urge SWRCB not to simply default to the Regional Protective Criteria in the Policy, which functionally require higher pumping rates at high winter flows, which likely would practically preclude most growers from legally storing sufficient water for the dry season. Following the procedures and standards for Alternative Regional Criteria set forth in §2.2 of the Policy might be a more practical approach.

We recommend retaining an allowable season of diversion, and a lower minimum bypass threshold (than the Regional Protective Criteria in the Policy) paired with a lower maximum cumulative diversion rate.

Forbearance Period

A forbearance period of approximately June 1 through October 31 would be beneficial to protect instream resources, but flexibility in that calendar-based forbearance period seems reasonable to accommodate different water year types.

At the same time, we urge the agencies to consider the competing concern that any forbearance period must not be made so long as to foreclose a meaningful path to compliance. While a very long forbearance period may appear more protective in the abstract, if its practical effect is to require growers to install so much storage that compliance becomes impractical, many growers may elect to remain outside the permit system entirely.

Permit Application and Compliance

In watersheds with a significant number of permit applications, gauges should be installed to enable relevant compliance points and assessment of cumulative impacts.

We recommend the agencies consider establishing a maximum individual rate of diversion that applies generally to diversions for cannabis cultivation. Lower diversion rates will have less impact on streamflow at any one time. Exceptions could be made in appropriate cases, e.g., where large rates of diversion are used to store peak flows from winter storms in a relatively short time window.

To comply with the permit program, diverters should provide daily diversion volumes to the SWRCB to ensure they are in compliance with licenses and permits. This reporting requirement would also provide an opportunity for the SWRCB to assess and adaptively manage permitting and allocations including diversion rates and volumes.

Consistency with the North Coast and Central Valley Regional Water Quality Control Board Cannabis Cultivation Waste Discharge Regulatory Program

CDFW and SWRCB should consider setbacks to ensure cultivation is outside of the riparian zone, consistent with the Waste Discharge Regulatory Program. The siting of pumps and diesel generators should also be consistent with both programs.

Adaptive Management

We recognize that SB 837 asks the agencies to develop instream flow criteria that are protective and based on sound science on a very tight timeline. This mandate emphasizes the need to adaptively manage the interim permitting program. We encourage the agencies to establish a transparent interim program with growers, in order to manage their expectations – that is, they should be made aware that regulations in the early years of the program may change over the longer-term. Finally, and perhaps most importantly, we recommend that the guidelines are clear on how the SWRCB will monitor and evaluate the program and explicitly discuss how water rights may be modified in the future.

Thank you again for the opportunity to provide comments on the Cannabis Cultivation and Water Rights Program. We look forward to working with the State Water Resources Control Board as the program is developed.

Sincerely,

Jennifer Carah
The Nature Conservancy

Matt Clifford
Trout Unlimited

Darren Mierau
California Trout