



To whom it may concern:

In general, this new order was written to be a one size fits all for the whole State and as a result does not fit our region nor does it take into account our rural areas, lack of (consistent) internet coverage, and access issues to parcels during winter.

The draft order appears to require growers to monitor their sites during and following every storm, to check the internet for river flow levels daily if they are diverting water, the period for diverting water during the winter has been reduced, the riparian set backs have been increased, and the allowable natural slopes for cultivation areas decreased. There is no allowance in the order for regional staff to give a variance for setbacks or slope if there is no threat from the site to water quality.

As a result, a portion of Humboldt existing growers who are already in the permitting process may not qualify for coverage under this new order. I would like to see the State Order re-written with more general protections and a direction for each regional board to write their own, more specific order, that fits each individual region. This new order would ideally allow the NCRWQCB to keep our current cannabis order as it is.

General Comments

1. The cost of compliance in north coast is significantly higher than in other regions due to property-wide and legacy requirement. Already north coast cultivators are struggling to become legal cultivators due to the regulatory costs. The property wide/ legacy requirement should apply to the whole state.
2. While the riparian protection minimums are protective, and there is a process for a compliance schedule for achieving the minimums, there is no process for variance which would allow for alternative setback, if warranted (e.g., hydrologic divides, dry farming, long established landuses). The order needs to have a process for regional board staff to allow alternative and smaller setbacks if warranted.
3. Qualified professionals are required in numerous instances and those should be carefully reviewed to determine if necessary considering the cost.
4. Some of the terms in Attachment A may be unnecessarily overly restrictive and pose challenges for implementation or impose increased costs without environmental benefit
5. Some of the terms in Attachment A may require specific authorization without agency jurisdiction.
6. There are technology requirements that may result in increased

costs and include reasonable access issues, perhaps without environmental benefit (e.g. monthly turbidity and pH monitoring, daily stream gage monitoring and diversion reporting). Decent internet is a limiting factor in the north coast there needs to be reasonable accommodations.

7. The lack of flexibility to achieve the protections beyond the means identified in Attachment A will result in a significant portion of north coast growers not qualifying for coverage. The existing cultivators that are pursuing legal cultivation will be squeezed out after significant investment over the past two years.

8. If cultivators don't fit then they will stay in the black market will persist along with crime and lack of tax base for funding public health and safety, while not really get at water quality protection because people just can't fit in.

9. This is a bait and switch by the water boards. Significant outreach was conducted by the north coast region to build trust with the cultivation community and draw people into the regulatory fold. There has been little outreach by the state board nor notification of cultivators regarding the proposed regulations. Cultivators thought they were signing up for one thing and now the draft presents a very different structure that doesn't fit with many of these cultivators and the investment in their business may be for not.

Specifics in Appendix A

General Requirements and Prohibitions

22. "Diversion of surface water for dust control is prohibited unless authorized under a valid water right."

What sort of water right is that? Storage via small irrigation? Is one available – i.e., is there a reasonable path to compliance??

27. "Unless authorized by a Regional Water Board site-specific WDR, cannabis cultivators shall not cultivate cannabis or have cannabis cultivation related land disturbance on slopes greater than 50 percent. "

Does the draft offer the Regional Water Board adequate discretion to develop site-specific WDRs? Could they provide a general WDR for sites that don't fit into the State-Board Order? Is there adequate staffing

at the Regional Water Board to develop other WDRs for coverage or will the lack of coverage preclude cultivators from gaining the necessary regulatory coverage to qualify for cultivation licensing? What about existing cultivation areas that are already enrolled under the regional board order and are on sloped greater than 50%?

30. “After July 1, 2017, and prior to initiating any land disturbance, Tier 2 cannabis cultivators located on slopes greater than 30% and less than 50% must submit a Site Erosion and Sediment Control Plan to the Regional Water Board Executive Officer for any cannabis-related land development or alteration. The Site Erosion and Sediment Control Plan shall be approved by the applicable Regional Water Board Executive Director prior to the cannabis cultivator initiating any land disturbance.

What about existing areas on slopes greater than 30%?

31. “within 90 days of application submittal, submit to the Executive Officer of the applicable Regional Water Board a time schedule and scope of work for use by the Regional Water Board in developing a compliance schedule.”

90 days is unreasonable. There is a lack of professionals and consultants in the North Coast region and more time will be needed to produce property wide scopes of work and compliance schedules

36. “The cannabis cultivator shall increase riparian setbacks as needed or implement additional Requirements to meet the performance Requirement of protecting surface water from discharges that threaten water quality. If the cannabis cultivation Site cannot be managed to protect water quality, the Executive Officer of the applicable Regional Water Board may revoke authorization for cannabis cultivation activities at the cannabis cultivation site.

Does this allow the regional water board the flexibility to follow a process that allows for site-specific variance to set back if warranted while ensuring water quality protection (e.g. hydrologic divide is closer than the set-back distance, the cultivation site and methods do not pose a threat of discharge and do not disturb the rest of the setback, significant mitigation is proposed)

Without a site-specific variance option, the north coast cultivators who qualify for waste discharge regulatory coverage will be significantly decreased though they may meet all the other conditions and not pose a threat of waste discharges.

36. “Minimum Riparian Setbacks

While the legislation directed the water boards to address seeps and springs there is basis for affording all seeps the maximum level of protection. Most seeps are found at cut banks and are day lighted shallow groundwater and form a puddle. Which protections from waste discharges and altered hydrology is necessary, the distances identified, especially without a site-specific option will preclude participation by a numerous cultivators.

The riparian distances are greater than in any other regulatory requirements in California. Without options available to provide equal or greater beneficial use protection, the set-backs could be found to be a taking of private property.

The watercourse descriptions would be better to follow the forest practice rule definitions.

The variance should not only include a compliance schedule, but also allow for protections without dictating method and manner of compliance.

Land Development and Maintenance, Erosion Control, and Drainage Features

1. All grading and earthwork shall be done by a state-licensed C-12 Earthwork and Paving contractor[1], as applicable.

Does this still allow people to do work on their own property with required authorization and achievement of the performance standard?

3. “Finished cut and fill slopes, including side slopes between terraces, shall not exceed slopes of 50 percent (1:2 slope) and should conform to the natural pre-grade slope whenever possible.”

If the slope is stable it should be allowed to qualify for coverage. While achieving 2:1 slope is a minimum goal, the site conditions may not allow and there needs to be site specific options for coverage. This is a good place to call for approval by a qualified professional.

4. “Cannabis cultivators shall not drive or operate vehicles or equipment within the riparian setbacks or within waters of the state unless authorized by a CWA section 404 permit, a CDFW LSA Agreement, or WDRs issued by the State Water Board or Regional Water Board.”

This seems very restrictive and it is unclear under what authority the authorization would be issued.

8. "...The cannabis cultivator shall consult with a qualified professional to identify potential erosion or sediment discharges and the appropriate control measures."

Is this enforceable?

14. "If retaining walls or other structures are required to provide slope stability, they shall be designed by a qualified professional."

Required by whom? How big? What is the trigger?

15. "Cannabis cultivators shall monitor erosion control measures during and after each storm event and repair or replace, as applicable, ineffective erosion control measures immediately. "

Every storm? We have many rain storms here on the north coast. Many of these properties are rural and not easily accessible in the winter. Monitoring during after every storm is not possible. Having a trigger for storm monitoring of 3 inches of rain in 24 hours is much more feasible. Again, this would possible be best left up to each regional board so it could be tailored to the region.

23. Cannabis cultivators shall have a qualified professional design the optimal road alignment, surfacing, drainage, maintenance requirements, and spoils handling procedures.

What if the roads are well functioning well – still need a qualified professional?

24. "All roads that will be used for winter or wet weather hauling/traffic shall be surfaced. Steeper road grades require higher quality rock (e.g., crushed angular versus river-run) to remain in place. The use of asphalt grindings is prohibited. "

This is a huge cost even if the road surface integrity is protected. Does the storm monitoring above count as winter use??

26. "Ditches shall be designed and maintained as recommended by a qualified professional.... Inboard ditches and ditch relief culverts shall be designed to ensure discharges into natural stream channels or watercourses are prevented. "

What if functioning well?

27. "Cannabis cultivators shall use water bars and rolling dips as designed by a qualified professional "

Requiring a consultant for very basic things may be unnecessary and costly. Should point to meeting a performance standard.

29. “Cannabis cultivators shall ensure that all road surface storm water drainage is discharged to a stable location away from wetlands and waterbodies as designed by a qualified professional.”

So all roads require hiring a consultant. This again is very costly

30. “Ditch relief culverts shall be designed by a qualified professional based on site-specific conditions. “

Seems unnecessary for DRCs. Should stick to instream work and business and professions code and provide a performance standard.

Cleanup, Restoration, and Mitigation

33. “Revegetation and mulching shall be completed within 30 days after land disturbance activities in the areas cease. “

36. “Cannabis cultivators shall revegetate soil exposed as a result of cannabis cultivation activities with native vegetation by live planting, seed casting, or hydroseeding within seven days of exposure. “

Revegetation should be done at a seasonally appropriate time.

41. “If water is present, then the cannabis cultivator shall develop a site-specific plan prepared by a qualified professional. “

Instream work should include a site specific plan from a qualified profession, regardless if water present or not.

53. “Cannabis cultivators shall only use rock fords for temporary seasonal crossings on small water bodies where aquatic life passage is not required during the time period of use. “

Rocked fords can be very effective for seeps. Where there is little flow and full flow capture would require disturbance. This is an over reach. How about site-specific approval required by CDFW and RWB?

Water Storage and Use

82. “Onstream storage reservoirs are prohibited unless the cannabis cultivator has an existing water right issued prior to January 1, 2017 that authorizes the onstream storage reservoir. Cannabis cultivators who

do not have an existing water right as of January 1, 2017, that authorizes the onstream reservoir storage, including cannabis cultivators with a pending application, an unpermitted onstream storage reservoir, and those who want to install a new onstream storage reservoir, are required to obtain an appropriative water right permit prior to diverting water from an onstream storage reservoir for cannabis cultivation. “

This has significant ramifications. There are many on-stream ponds that were built prior to 2007 on the north coast. There are also many older ponds whose overflow has become a class III channel that does not connect to the stream system. Essentially these ponds are at the head of a class III. These ponds provide much needed storage on these properties. Many people who own these don't even realize they need a water right for these ponds. Many of these properties are not current cannabis farms. Why have a Jan 1 2017 deadline? If the pond is determined to be stable and not a threat to water quality is should be allowed regardless of when the property enters the cannabis process.

86. “Cannabis cultivators shall not use off-stream storage reservoirs to store water for cannabis cultivation unless the reservoir is properly sited and has been designed by a qualified professional.” Cannabis cultivators shall plant native vegetation along the perimeter of the off-stream storage reservoir.

What proof is required and to what standards? Vegetation planted on the berm can result in flow paths along the roots and weight on the berm.

87. “Cannabis cultivators shall design and manage off-stream storage facilities that are open to the environment, such as storage ponds and reservoirs, to maintain sufficient freeboard to capture stormwater runoff of a representative 25-year, 24-hour storm event.”

Is this protective enough? What is basis for 25-yr versus 100-yr with culverted crossings.

Irrigation Runoff

Should have a standard regarding no “hot spots” of fertilizer.

113. “Cannabis cultivators shall not apply agricultural chemicals within 48 hours of a predicted rainfall event of 0.25 inches or greater.”

What is tracking this?

Fertilizers and Soils

114. “To minimize infiltration and water quality degradation, Cannabis cultivators shall only irrigate and apply fertilizer to cannabis cultivation areas consistent with crop need (i.e., agronomic rate). “

Again, what is tracking this?

115. “...Cannabis cultivators shall not apply nitrogen at a rate greater than 319 pounds/acre/year unless plant tissue analysis performed by a qualified individual demonstrates the need for additional nitrogen application. The analysis shall be performed by an agricultural laboratory certified by the State Water Board’s Environmental Laboratory Accreditation Program. “

Is this reasonable? Are there labs available capable of doing these analyses? Do other agriculture crops have to have lab tissue work done to supply higher amounts of nitrogen? If not, why do we have a special rule for cannabis.

Winterization

Winter period is November 15 to April 1. Typically on the north coast October 15 – May 15 is considered winter period for waste discharges. How is this protective? Again a good example of why these specifics should be left up to each regional board.

130. “Cannabis cultivators shall apply linear sediment controls (e.g., silt fences, wattles, etc.) along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow length[2] at the frequency specified below.”

Clarify what is exposed soils.

131. “Culverts shall be inspected prior to the onset of fall and winter precipitation and following precipitation events to determine if maintenance or cleaning is required.”

Every precipitation event? see above comments under Land Development #15

SECTION 3 – NUMERIC AND NARRATIVE INSTREAM FLOW REQUIREMENTS (INCLUDING GAGING)

Narrative Instream Flow Requirements

3. “Surface Water Dry Season Forbearance Period: Cannabis cultivators

shall not divert surface water for cannabis cultivation activities at any time from April 1 through October 31 of each calendar year, unless the water diverted is delivered from storage in compliance with Narrative Flow Requirement 4.”

Adds 6 weeks in spring and 2 weeks in fall to the forbearance period. Again this seems to be written more with Southern California in mind with there lower rain falls. Allow each regional board to set up a forbearance period appropriate for the region.

4. “Cannabis cultivators that divert water from a waterbody with an assigned compliance gage in Section 4 of this Policy are required to ensure that the real-time daily average flow, as published on a designated compliance gage website identified by the Deputy Director for Water Rights, exceeds the minimum monthly instream flow Requirement at the cannabis cultivator’s assigned compliance gage. Cannabis cultivators shall verify and document compliance with the applicable Numeric Flow Requirement on a daily basis for each day of surface water diversion. “

Reasonable access needs to be afforded to cultivators. The north coast is limited on internet and cellular access.

5. “In addition to Narrative Flow Requirement 4, at all times the cannabis cultivators shall bypass a minimum of 50 percent of the surface water flow past their point of diversion, as estimated based on visually observing surface water flow at least daily.”

Could be long hike to spring box daily – should specify or other reasonable means of determining bypass and diversion rates.

“In requesting such an exemption, cannabis cultivators shall provide substantial evidence demonstrating that the spring, seep, or artesian well does not have surface or subsurface hydrologic connectivity at any time of year during all water year types[3]. The substantial evidence must be documented by a qualified professional.”

Should be consistent with the business and professions code.