



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Ecosystem Conservation Division/Water Branch  
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[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

EDMUND G. BROWN JR., Governor  
CHARLTON H. BONHAM, Director



September 1, 2017

Public Comment  
Cannabis Policy and Staff Report  
Deadline: 9/6/17 by 12 noon

Via Electronic Mail Only



Jeanie Townsend  
Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100  
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Dear Ms. Townsend:

**Subject: Comment Letter - Cannabis Cultivation Policy; Cannabis Cultivation Policy Staff Report; and General Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities**

On July 7, 2017, the State Water Resources Control Board (State Water Board) released the Cannabis Cultivation Policy (Cannabis Policy); Cannabis Cultivation Policy Staff Report (Cannabis Staff Report); and General Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General WDR). As a Trustee Agency, the California Department of Fish and Wildlife (Department) has a responsibility to maintain native fish, wildlife, plant species, and natural communities for their intrinsic and ecological value and for their benefits to all citizens in the state. (Fish & G. Code, § 711.7, subd. (a); Pub. Resources Code, § 1802.) The Department recognizes the immense effort of State Water Board staff in developing these three products, appreciates the opportunity to consult with State Water Board staff during the development process, and provides comments below. The Department is committed to working with State Water Board staff during program implementation and any Cannabis Policy revision.

- 1. Low Flow Threshold** – For enforceability, clarity, and consistency with established scientific methods, the Department recommends replacing the “Low-Flow Threshold” terminology and how it is defined and applied in the Cannabis Policy and Staff report. In the Glossary of Terms, “Low Flow Threshold” is defined as “*The minimum flow in a stream that is considered supportive of the aquatic ecosystem, including water quality and salmonid rearing and migration*”. The Department’s Instream Flow Program developed a Low-Flow Threshold Fact Sheet, which defines a low-flow threshold as follows: “*A low-flow threshold identifies where flow levels are receding into the “danger zone” for aquatic life (DFO 2013). These are survival-level flows and definitely not “optimal” ecological flows.*” The Cannabis Policy states that the Groundwater Low-Flow Threshold was developed to “inform the need for additional

actions to address impacts associated with cannabis groundwater diversions.” The Department would like to continue to coordinate with the State Water Board on the application of approaches to calculate groundwater triggers or flow thresholds to reduce groundwater pumping and use impacts from cannabis cultivation.

2. **Adaptive Management** – The Cannabis Policy could benefit by including an adaptive management framework to provide a process to support implementation and monitoring of the regulatory program and any future revisions. Adaptive management involves hypotheses development as the conceptual basis and rationale to support implementation of management actions, followed by outcomes monitoring and assessment to determine whether the project goals and objectives are being achieved. A rigorous outcomes assessment in an adaptive management process serves as a test of the established hypotheses and informs potential future changes in management actions. Adaptive management should not suggest that standards are flexible, but should provide a systematic process for determining whether or not defined and measurable biological goals were met by the management actions. If an adaptive management framework is added to the Cannabis Policy, the Department is committed to working with the State Water Board staff in the adaptive management process.
3. **Cannabis Policy (Page 17)** – To enhance clarity for applicants and overall enforcement, the Department recommends adding additional language that clearly discloses the Small Irrigation Use Registration (SIUR) availability or non-availability on Wild and Scenic Rivers, fully appropriated streams, and other designations that may prohibit SIUR issuance.
4. **Cannabis Policy, Attachment A (Pages 14 and 15)** - The Department supports terms 30 and 32 which are aimed at protecting fish spawning, rearing, and migration, in compliance with the legislation. These two terms are crucial to reducing stream sediment impairment and impacts that are deleterious to fish physiology, habitat, and behavior (Bash 2001; Flosi, Hopelain et al. 2010; Singler, Bjornn et al. 1984; Burns 1972; and NCRWQCB 2015). All cannabis cultivators should provide evidence that they have obtained valid permits for all land disturbances.
5. **Cannabis Policy, Attachment A (Page 16)** – For term number 36, the Department supports setbacks from waterways and water bodies for all cannabis cultivations sites. Department supports a minimum 150 feet setback distance for all waters of the state measured from the high water mark. Setbacks protect the riparian zone as well as fish and their habitat (CALFIRE 2017). As buffer distances increase, sediment and other surface water pollutants decreases (Castelle, Connolly et al. 1992). Adequate setback distance is required to comply with the legislation and the State Water Boards antidegradation policy. In addition, Fish and Game Code section 5652(a) states *“it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of the state or to abandon, dispose of or throw*

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*away, within 150 feet of the high water mark of waters of the state, any cans, bottles, garbage, motor vehicle or parts thereof, rubbish, litter, refuse, waste, debris, or the viscera or carcass of any dead mammal or the carcass of any dead bird”.*

6. **Cannabis Policy, Attachment A (Page 27)** – Implementation of term number 48, may result in the unauthorized take of listed species under the state and federal endangered species acts. Authorization of incidental take of a listed species requires extensive approval, consultation, and permitting *prior* to relocating fish and wildlife species. At a minimum, compliance with California Endangered Species Act and federal Endangered Species Act are required. Obtaining regulatory authorizations prior to cannabis cultivation activities will address the intent of this term. We therefore recommend removal of this term.
  
7. **Cannabis Policy, Attachment B (Page 10)** – The stream classifications provided in the Water Course definition are similar to, but inconsistent with, the State Water Board’s Policy for Maintaining Instream Flows in Northern California Coastal Streams (North Coast Instream Flow Policy) and California Forest Practice Rules 2017 (Forest Practice Rules). For example, the Cannabis Policy criteria for a class II watercourse does not include presence of habitat for non-fish aquatic species while both the North Coast Instream Flow Policy and Forest Practice Rules use this as a determining factor. Additionally, the Cannabis Policy uses duration of flow in a typical year, in the absence of diversions, to determine watercourse classification. The Department recommends including references to support the use of duration of flow as a determining factor for watercourse classification and adding the presence of habitat for non-fish aquatic species to the criteria for a class II watercourse.

The Department looks forward to continued consultation with the State Water Board staff, during the development and implementation of the Cannabis Cultivation Policy and cannabis regulatory program. If you have any questions, please contact Amber Villalobos at (916) 445-1277 or by email at [Amber.Villalobos@wildlife.ca.gov](mailto:Amber.Villalobos@wildlife.ca.gov).

Sincerely,



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Enclosure (References)

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