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Comment Letter – Cannabis Policy and Staff Report
Comment Letter – Cannabis General Order

To Whom it May Concern-

My name is Steven Lazar and I am writing this letter because I have grave concerns about the current design of the draft General Order and Policy Statement. Many of these concerns were previously expressed verbally to agency representatives during the workshop at the Adorni Center in Eureka on July 20th, as a number of other attendees can attest.

As a 20+ year resident of Humboldt County, a land use planner engaged in cannabis regulation for over a decade, and an author of Humboldt County's current cannabis land use regulations, I have seen first-hand the effects of an unregulated industry, and am natively sympathetic to the efforts currently being undertaken by the State Water Resources Control Board. My concerns are detailed below and recommendations are provided at the end of this letter. While I understand the attraction and perceived equitability of a uniform, statewide one-size-fits-all approach, it will ultimately be unfair to our region, and serve to counteract local efforts that are already well underway as we work to daylight this massive industry composed of tens of thousands of existing operators.

The Statewide General Order (General Waste Discharge Requirements) directly incorporates and implements the "Cannabis Cultivation Policy - Principles and Guidelines for Cannabis Cultivation" (Attachment A of the order). Many areas of the policy are more rigorous, restrictive, or simply inconsistent with the provisions of the North Coast Regional Board's (RWQCB) Cannabis Cultivation Waste Discharge Regulatory Program (CCWDRP) (i.e. – Order# R1-2015-0023 - Waiver of Waste Discharge Requirements and General Water Quality Certification). While ultimately the provisions of the Draft Statewide General Order are increasingly protective of the environment in most cases, the sudden challenges they present will be both difficult and demoralizing for thousands of existing operators in Humboldt County as well as the tens of thousands throughout Region 1 (North Coast). According to Adona White of the RWQCB, CCWDRP enrollment numbers currently hover around 3,500. Humboldt County is home to over one third of all currently enrolled sites (1,250) and over 1800 existing operators are currently seeking permits (more than 75% of local applicants) under the County's Commercial Medical Marijuana Land Use Ordinance (CMMLUO).

As currently written, all operators (statewide) are required to enroll under the order by **July 1st, 2018**. The order effectively declares that coverage under the Regional Board order will also sunset on this date:

39. The North Coast Regional Water Board and the Central Valley Regional Water Board have authorized discharges related to cannabis cultivation under Orders R1-2015-0023 and R5-2015-0113. **The State Water Board intends that regulatory coverage under an existing Regional Water Board general order will be terminated by the applicable Regional Water Board by July 1, 2018.** All existing Dischargers must apply for coverage under this General Order.

The principal challenges existing operators (enrollees) likely will be facing in 2018 come from the following areas:

1. discrepancies and increases in riparian area setbacks for watercourses and wetlands

This will primarily prove challenging for Tier 2 enrollees whose cultivation areas currently may utilize a 50 foot setback from wetlands and Class III watercourses and 100 foot setbacks from Class I/II watercourses. Under the Draft State Order, operators now face setbacks increases of 50, 100, or even 150 feet, depending on topography, type of feature, and stream classification.

2. changes in standard forbearance period for surface water diversions; and **extension of forbearance to springs, hydrologically connected groundwater sources, and small community water systems**

At minimum, a 45-day increase in the forbearance period will be necessary –now 7 months vs. typical 5½ month period established by CMMLUO and CCWDRP.

Extending the minimum length of the forbearance period and applying the principles of forbearance to additional types of water sources will be disruptive as it represents a sudden unexpected change that will prove both technically and financially difficult to accommodate by many existing operators within the timeframes provided for demonstrating compliance –especially given the limited season for earthwork and similar construction activities associated with developing vessels for large volumes of water storage;

3. discrepancies between std. RWQCB documentation and technical report requirements under statewide order

The centerpiece of CCWDRP Tier 2 enrollment (operators > 10,000 ft.² cultivation area or cultivation sites presenting a higher threat --not meeting one or more certain low threat standards) is the Water Resource Protection Plan (WRPP). Under the RWQCB program, low threat dischargers (Tier 1) were allowed to “self-certify” and required to *“inspect their site periodically and re-certify that it meets Tier 1 characteristics and standard conditions annually. Annual updates to the certification shall be maintained on site with the initial certification and copy of the Order.”* The draft statewide order now requires preparation of one or more of the following new technical reports, including: Site Management Plan, Site Erosion and Sediment Control Plan, Disturbed Area Stabilization Plan, Nitrogen Management Plan, and Site Closure Report(s). Even if there were no change in the amount of information collected under these new specific technical reports, this will represent a new cost/challenge to existing operators, many of whom remain somewhat mystified by the regulatory requirements thus far developed. It will also represent a renewed burden and complication to local communities of private consultants that have been over-extended for some time now, under the current effort to assist operators in evaluating and addressing site-specific compliance challenges.

4. Rapid termination of CCWDRP and lack of provisional approval concept / explicit pre-authorized timeframes for achieving compliance

The CCWDRP makes clear that Tier 2 enrollees may be granted up to 5 years to achieve compliance with the standard conditions of the order depending on the complexity and degree of challenges faced. The Draft State Order does not provide the same measure of assurances and is unclear (or possibly of intolerant) on matters involving non-compliance with the new forbearance periods and restrictions being established under the forthcoming Principles and Guidelines Policy and Small Irrigation Use Registration (SIUR) requirements being applied to Cannabis Cultivators.

For your reference the specific areas from the North Coast Regional Board Waiver and Draft State General Order are provided below. They are grouped by regulatory area (eg. Water Use, Riparian Setbacks, Compliance timeframes, etc.) –sections are color-coded to allow for differentiation between **SWRCB** and **RWQCB** requirements.

ANALYSIS & RECOMMENDATION

During this critical period (leadup to and wake of forthcoming state licensing), changes to any of the

water quality protections currently being implemented by the North Coast Regional Water Quality Control Board and County of Humboldt will invite unneeded chaos, and frustrate efforts to achieve current local water storage and conservation goals, and equally important compliance targets for controlling non-point source pollution and other water quality objectives tied to cannabis cultivation sites.

The abruptness of implementation and degree of changes being considered fails to account for the fragile bargain with the industry that has already been brokered under sensible and sensitive local regulatory efforts advanced at the turning point (passage of MMRSA: SB643, AB243, AB266). The changes to waste discharge requirements will prove counterproductive to their purpose, in that they will drive a significant percentage of local applicants (currently courting legitimacy) back into the black market, as well as reduce participation by other existing operators who might otherwise pursue a local approval and state licensing during the next 2-3 years. With local and state agencies poised to finally begin making significant advancements in enforcement of illegal cannabis cultivation activities, keeping as many existing operators as possible in compliance is of paramount importance – failure to do so creates untenable local enforcement burdens during this critical window.

The Regional Water Quality Control Board's "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" (Order No. 2015-0023) became effective in August of 2015. Extensive and innovative mitigation for potential environmental effects was developed during the accompanying environmental review (SCH # 2015042074).

Under 23 CCR § 3861 (Water Quality Certification), a General Water Quality Certification may persist for up to 5 years after issuance. In light of the preceding points, it is imperative that provisions of the CCWDRP remain in effect through 2020, to enable the greatest percentage of existing operators a chance to participate and achieve compliance with short and long term water quality objectives. This will allow for further development of site-specific compliance strategies brokered during local permit review, as well as preserve greater opportunities for relocation pursuant to local incentives (Retirement, Remediation, and Relocation provisions of the CMMLUO), resulting in proper closure and remediation and reduced abandonment of former sites.

As someone who has visited, met with, counseled, and listened to input from hundreds of cannabis farmers during the past several years, I urge you to carefully consider my request and its basis in genuine understanding and concern. While this existing industry negotiates the transition to a regulated marketplace, the challenges faced by cannabis producers are often already immense, costly, and increasingly complex. The success to which this transition occurs is linked to local improvements in social and environmental conditions, economic prosperity, and the long-term stability of the north coast region and its surroundings. This should be handled with great care. Please honor the work that has already been undertaken by our state agencies (DFW and RWQCB) and representatives (Senator McGuire and Assemblymember Wood), as well as local elected officials and agencies currently engaged in this important campaign. This can be best achieved by providing reasonable compliance timeframes for existing operators within our region.

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link to Commercial Medical Marijuana Land Use Ordinance (CMMLUO) - Humboldt County Ordinance #2559

<https://humboldt.gov/DocumentCenter/View/53372>

link to proposed amendments (CCLUO):

<https://humboldt.gov/DocumentCenter/Home/View/60896>

COMPLIANCE TIMEFRAME(S)

19. This Order requires control of erosion and drainage features, proper soil disposal, proper stream crossing maintenance and improvements, water conservation, proper storage and handling of fertilizers and soil amendments, refuse and human waste, and petroleum products and other chemicals, and riparian management and protection. Standard conditions I.A. further describe the required site conditions. All Tier 1 Dischargers are responsible for ensuring that standard conditions are met. For more complex properties, the **water resource protection plans** required under Tier 2 are meant to describe the specific measures a discharger implements to achieve compliance with standard conditions. Plans can range from a simple description of the management practices to be implemented, to comprehensive descriptions of existing sources of waste discharge and elevated water temperatures, management practices employed to control the sources, and a monitoring and reporting program to document actions taken to control the sources and the effectiveness of such actions. The level of detail required in a plan will be dependent on the site-specific characteristics of an activity/operation. Plans must be kept available on the site and subject to inspection.

B. Water Resource Protection Plan

Tier 2 Dischargers and Tier 3 Dischargers who intend to cultivate cannabis before, during, or following site cleanup activities shall develop and implement a water resource protection plan that contains the elements listed below. Dischargers must keep this plan on site, and produce it upon request by Regional Water Board staff. Dischargers shall implement plans, including the identified management practices in a manner that is protective of water quality. If time is needed to meet standard conditions, **the plan must include a timeline with measurable milestones.**²³ Management practices shall be properly designed and installed, and assessed periodically for effectiveness. If a management measure is found to be ineffective, the plan must be adapted and implemented to incorporate new or additional management practices to meet standard conditions. Dischargers shall certify annually to the Regional Water Board individually or through an approved third party program that the plan is being implemented and is effectively protecting water quality, and report on progress in implementing site improvements intended to bring the site into compliance with all conditions of this Order.

²³ **Generally, compliance with standard conditions is expected in the shortest time possible, and no later than the expiration of this Order (five years).** However, in recognizing the challenges associated cumulative water use and cleanup of legacy conditions (available resources, studies, additional permitting, etc.), compliance schedules for standard condition I.5.a, and standards for which corrective work is needed under Order section II.5.c may extend beyond Order expiration and continue through any reissuance of the Order.

42. To apply for coverage under this General Order or to assert conditional exemption from the General Order and register the cultivation activity, the Discharger shall submit an application through the Internet

as described in the Application Procedure section of this General Order.

a. The application requires the Discharger to self-certify that all applicable BPTC measures are being implemented, or will be implemented by **November 15, following the enrollment date**. Upon submittal of the application, the Discharger will obtain a notice of receipt. Applicants that cannot implement all applicable BPTC measures by November 15, following their enrollment date, shall submit to the Regional Water Board Executive Officer a *Site Management Plan* that includes a time schedule and scope of work for use by the Regional Water Board in developing a compliance schedule as described in Attachment A.

Best Practicable Treatment or Control (BPTC)

Disturbed Area Stabilization Plan

Within 90-days of the issuance of a notice of receipt, Tier 1 or Tier 2 cannabis cultivators classified as high risk (any portion of the disturbed area exists within the riparian setbacks Requirements specified in Section 1 of this Policy except as authorized by a CDFW Lake or Streambed Alteration permit), shall submit a ***Disturbed Area Stabilization Plan*** that describes how compliance with the riparian setbacks will be achieved.

Areas disturbed upon initial site development that are located within the riparian setback specified in the Policy are considered disturbed area and will place the Cannabis Cultivation Site under the high risk level.

Roads and watercourse crossings designed, constructed, and maintained consistent with the Road Handbook are not considered disturbed areas.

Consistent with the Business and Professions Code, the Forest Practice Act, and other state laws, certain technical report preparation, design calculations, and report preparation must be prepared under the supervision of a California licensed civil engineer, professional forester, or professional geologist.

When required, the *Disturbed Area Stabilization Plan* shall be prepared by an individual qualified as described below:

- i. A California Registered Professional Civil Engineer.
- ii. A California Registered Professional Geologist.
- iii. A California Certified Engineering Geologist.
- iv. A California Registered Landscape Architect.
- v. A Professional Hydrologist registered through the American Institute of Hydrology.
- vi. A Certified Professional in Erosion and Sediment Control (CPESC)TM registered through Enviro Cert International, Inc.
- vii. A Certified Professional in Storm Water Quality (CPSWQ)TM registered through Enviro Cert International, Inc.
- viii. A Professional in Erosion and Sediment Control registered through the National Institute for Certification in Engineering Technologies (NICET).

If the cannabis cultivator cannot achieve compliance by the next November 15 date (stabilization work will continue past November 15 or will continue the following year), the Cannabis Cultivator must include a time schedule and scope of work for approval by the Regional Water Board Executive Officer and use in preparing an enforcement order. Attachment D of the Cannabis Gene

Definitions

Following are definitions of terms used in the five sections of the Requirements.

No. 11. Land Disturbance – land areas where natural conditions have been modified in a way that may result in an increase in turbidity in water discharged from the site. Disturbed land includes areas where natural plant growth has been removed whether by physical, animal, or chemical means, or natural grade has been modified for any purpose. Land disturbance includes all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access. Land disturbance activities include, but are not limited to, construction of roads, buildings, water storage areas; excavation, grading, and site clearing. Disturbed land includes cultivation areas, storage areas where soil or soil amendments (e.g., potting soil, compost, or biosolids) are located. Attachment D of the Cannabis General Order provides guidance on the contents of the Disturbed Area Stabilization Plan.

ATTACHMENT D: TECHNICAL REPORT GUIDANCE

DISTURBED AREA STABILIZATION PLAN

Tier 1 or Tier 2 Dischargers classified as high risk shall submit and implement a Disturbed **Area Stabilization Plan** (Plan). (Note that high risk site classification is a temporary condition that exists until the Discharger stabilizes the disturbed area located within the setbacks. Once the area is stabilized and the Regional Water Board approves the work, the Discharger can petition the Regional Water Board to reclassify the site as either low or moderate risk, depending upon the site conditions.) The Plan shall be prepared under the supervision of a qualified professional as described in the Provisions section of the General Order.

The Plan shall describe how best practical treatment and control (BPTC) measures listed in Attachment A will be implemented to achieve the goal of stabilizing the disturbed area to minimize the discharge of sediment off-site and complying with the setback requirements. Site specific factors (e.g., percent slope, precipitation amounts, soil type, vegetation status, etc.) shall be considered in determining the appropriate level of water quality protection. The Plan shall include an implementation schedule; if the work cannot be completed by November 15, the Discharger shall contact the Regional Water Board to establish a compliance schedule. Interim soil stabilization BPTC measures shall be performed as soon as practicable. Interim measures are those that can be implemented immediately following site development.

Certain activities within the setbacks that are authorized by a California Department of Fish and Wildlife Lake or Streambed Alteration Agreement, an Army Corps section 404 permit, a Regional Water Board section 401 water quality certification, or waste discharge requirements issued by a Regional Water Board or the State Water Board may be performed within the setbacks contained in the General Order and do not trigger a high risk Discharger classification.

At a minimum, the Plan shall address the following:

1. Site Description

- 1.1. Describe the site (e.g., topography, vegetation, elevation, historic precipitation patterns, soil types, surface waterbodies, etc.).
- 1.2. Provide a site map that shows the location of all water bodies, the applicable setback(s), all disturbed areas within the setback(s), and the storm water runoff sampling locations.
- 1.3. Describe how the area was disturbed (e.g., previously existing condition, timber harvest, grading activities, etc.) and the level of disturbance.
- 1.4. Describe the native vegetation that typically exists in the disturbed area.

2. Erosion Prevention BPTC Measures

2.1. Describe the BPTC measures that have been, or will be implemented to prevent or limit erosion. Provide an implementation schedule for BPTC measures that have not yet been implemented. Identify the erosion prevention BPTC measures on a site map.

2.1.1. The description shall address physical BPTC measures, (e.g., placement of straw mulch, plastic covers, slope stabilization, soil binders, culvert outfall armoring, etc.) and biological BPTC measures (vegetation preservation/replacement, hydro seeding, etc.).

3. Sediment Control BPTC Measures

3.1. Describe the BPTC measures that have been, or will be implemented to capture sediment that has been eroded. Provide an implementation schedule for BPTC measures that have not yet been implemented. Identify the sediment control BPTC measures on a site map.

3.1.1. The description shall address physical BPTC measures, (e.g., placement of silt fences, fiber rolls, or settling ponds/areas, etc.) and biological BPTC measures (vegetated outfalls, hydro seeding, etc.).

4. Maintenance Activities - Erosion Prevention and Sediment Control

4.1. Describe how the erosion prevention and sediment control BPTC measures will be monitored and maintained to protect water quality.

4.2. Describe how any captured sediment will be either stabilized in place, excavated and stabilized on-site, or removed from the site.

5. Long Term Stabilization Measures

5.1. Describe any revegetation activities designed to provide long term stabilization, that will occur either at the beginning or end of the precipitation season

6. Compliance with General Order Schedule Limits

6.1. If the Discharger will not be able to achieve compliance by the next November 15 date (e.g., stabilization work will continue past November 15th or will continue the following year), the Discharger shall include a compliance schedule and scope of work for approval by the Regional Water Quality Control Board Executive Officer and for use in preparing an enforcement order

RIPARIAN SETBACKS

3. Riparian and Wetland Protection and Management

a. For Tier 1 Dischargers, cultivation areas or associated facilities shall not be located within 200 feet of surface waters. While 200 foot buffers are preferred for Tier 2 sites, at minimum, cultivation areas and associated facilities shall not be located or occur within 100 feet of any Class I or II watercourse or within 50 feet of any Class III watercourse or wetlands. The Regional Water Board or its Executive Officer may apply additional or alternative¹⁸ conditions on enrollment, including site-specific riparian buffers and other BMPs beyond those identified in water resource protection plans to ensure water quality protection.

b. Buffers shall be maintained at natural slope with native vegetation.

c. Buffers shall be of sufficient width to filter wastes from runoff discharging from production lands and associated facilities to all wetlands, streams, drainage ditches, or other conveyances.

d. Riparian and wetland areas shall be protected in a manner that maintains their essential functions, including temperature and microclimate control, filtration of sediment and other pollutants, nutrient cycling, woody debris recruitment, groundwater recharge, streambank stabilization, and flood peak attenuation and flood water storage.

¹⁸ Alternative site-specific riparian buffers that are equally protective of water quality may be necessary to accommodate existing permanent structures or other types of structures that cannot be relocated. ¹⁹ Spoils are waste earthen or organic materials generated through grading or excavation, or waste plant growth media or soil amendments. Spoils include but are not limited to soils, slash, bark, sawdust, potting soils, rock, and fertilizers. ²⁰ See definition and link to maps at: <http://water.usgs.gov/GIS/huc.html>

Minimum Riparian Setbacks¹

Common Name	Watercourse Class	Distance ² (Low Risk ²)	Distance ² (Mod Risk ²)	Variance ³
Perennial watercourses, springs, or seeps	I	150 ft.	200 ft.	Compliance Schedule
Intermittent watercourses	II	100 ft.	150 ft.	Compliance Schedule
Ephemeral watercourses	III	50 ft.	100 ft.	Compliance Schedule
Other waterbodies (lakes, etc.) and wetlands		150 ft.	200 ft.	Compliance Schedule

¹ Riparian setbacks do not apply to man-made irrigation canals, water supply reservoirs, and hydroelectric canals (Watercourse Class IV) that do not support native aquatic species, however cannabis cultivators shall ensure land disturbance, cannabis cultivation activities, and facilities are not located in or disturb the existing riparian and wetland riparian vegetation associated with these Watercourse Class IV waterbodies.

² Risk is defined in Table 1 of this Policy and is based on the natural (prior to land disturbance activities) surface topography.

³ Variance to riparian setbacks is only allowed if consistent with this Policy and a work plan and compliance

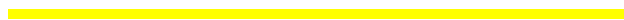
WATER USE & FORBEARANCE

5. Water Storage and Use:

a. Size and scope of an operation shall be such that the amount of water used shall not adversely impact water quality and/or beneficial uses, including and in consideration with other water use by operations, instream flow requirements and/or needs in the watershed, defined at the scale of a HUC-12²⁰ watershed or at a smaller hydrologic watershed as determined necessary by the Regional Water Board Executive Officer.

B. Water Resource Protection Plan

8. Water Use: Plan shall record water source, relevant water right documentation, and amount used monthly. ²⁶ Plan must describe water conservation measures and document approach to ensure that the quantity and timing of water use is not impacting water quality objectives and beneficial uses (including cumulative impacts based on other operations using water in the same watershed). Water use will be presumed to not adversely impact water quality under one of the following scenarios:



• No surface water diversions from May 15-Oct 31.

- Water diversion pursuant to a local plan that is protective of instream beneficial uses.
- Other options: (e.g., % of flow present in stream; riffle depth; gage at bottom of Class I stream; AB2121 equations; DFW flow recommendations; promulgated flow objective in Basin Plan).

Water Storage and Use	
Water Supply, Diversion, and Storage	
67.	All water diversions for cannabis cultivation from a surface stream, groundwater diversions from a subterranean stream flowing through a known and definite channel, or other surface waterbody are subject to the surface water forbearance period and instream flow Requirements. This includes lakes, ponds, and all springs or seeps, including those that do not flow off the property. See Section 3. Numeric and Narrative
68.	Cannabis cultivators diverting under riparian water right claims shall submit a Cannabis SIUR application within 60 days of when the program becomes available or commence use of another water source during the forbearance period.
69.	Groundwater extractions may be subject to additional requirements, such as a forbearance period, if the State Water Board determines those requirements are reasonably necessary.
70.	Cannabis cultivators are encouraged to use appropriate rainwater catchment systems to collect from impermeable surfaces (e.g., roof tops, etc.) during the wet season and store storm water in tanks, bladders, or off-stream engineered reservoirs to reduce the need for surface water or groundwater diversions.
71.	Cannabis cultivators shall not divert surface water unless it is diverted in accordance with an existing water right that specifies, as appropriate, the source, location of the point of diversion, purpose of use, place of use, and quantity and season of diversion. Cannabis cultivators shall maintain documentation of the water right at the cannabis cultivation site. Documentation of the water right shall be available for review and inspection by the Water Boards, CDFW, and any other authorized representatives of the Water Boards or CDFW.
72.	Cannabis cultivators shall ensure that all water diversion facilities are designed, constructed, and maintained so they do not prevent, impede, or tend to prevent the passing of fish, as defined by Fish and Game Code section 45, upstream or downstream, as required by Fish and Game Code section 5901. This includes but is not limited to the supply of water at an appropriate depth, temperature, and velocity to facilitate upstream and downstream aquatic life movement and migration. Cannabis cultivators shall allow sufficient water at all times to pass past the point of diversion to keep in good condition any fish that may be planted or exist below the point of diversion as defined by Fish and Game Code section 5937. Cannabis cultivators shall not divert water in a manner contrary to or inconsistent with these Requirements.
73.	Cannabis cultivators shall not divert surface water unless in compliance with all additional Cannabis SIUR conditions required by CDFW.
74.	Water diversion facilities shall include satisfactory means for bypassing water to satisfy downstream prior rights and any requirements of policies for water quality control, water quality control plans, water quality certifications, waste discharge requirements, or other local, state or federal instream flow requirements. Cannabis cultivators shall not divert in a manner that results in injury to holders of legal downstream senior rights. Cannabis cultivators may be required to curtail diversions should diversion result in injury to holders of legal downstream senior water rights or interfere with maintenance of downstream instream flow requirements.
80.	Cannabis cultivators shall not divert more than a maximum instantaneous diversion rate of 10 gallons per minute, unless authorized under an existing appropriative water right.

84.	The cannabis cultivator shall install and maintain a measuring device(s) that meets the requirements for direct diversions greater than 10 acre-feet per year in California Code of Regulations, Title 23, Division 3, Chapter 2.7 ²⁰ . The measuring device(s) shall be located at or near the point of diversion. Cannabis cultivators shall maintain records of daily diversion with separate records that document the amount of water used for cannabis cultivation separate from the amount of water used for other irrigation purposes and other beneficial uses of water (e.g., domestic, fire protection, etc.). Cannabis cultivators shall maintain daily diversion records at the cultivation site and shall make the records available for review or by request by the Water Boards CDFW, or any other authorized representatives of the Water Boards or CDFW.
85.	The State Water Board intends to develop and implement a basin-wide program for real-time electronic monitoring and reporting of diversions, withdrawals, releases and streamflow in a standardized format if and when resources become available. Such real-time reporting will be required upon a showing by the State Water Board that the program and the infrastructure are in place to accept real-time electronic reports. Implementation of the reporting requirements shall not necessitate amendment to this Requirement.
95.	Water storage bladders are not encouraged for long-term use. If bladders are used, the cannabis cultivator shall ensure that the bladder is designed and properly installed to store water and that the bladder is sited to minimize the potential for water to flow into a watercourse in the event of a catastrophic failure. If a storage bladder has been previously used, the cannabis cultivator shall carefully inspect the bladder to confirm its integrity and confirm the absence of any interior residual chemicals prior to resuming use. Cannabis cultivators shall periodically inspect water storage bladders and containment features to ensure integrity. Water storage bladders shall be properly disposed of or recycled and not resold when assurance of structural integrity is no longer guaranteed.
96.	Cannabis cultivators shall not use water storage bladders unless the bladder is safely contained within a secondary containment system with sufficient capacity to capture 150 percent of a bladder’s maximum possible contents in the event of bladder failure (i.e., 150 percent of bladder’s capacity). Secondary containment systems that are open to the environment shall be designed and maintained with sufficient freeboard to capture storm water runoff of a representative 25-year, 24-hour storm event.

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

This section outlines the numeric and narrative instream flow Requirements established in this Policy.

The narrative instream flow Requirements apply to all diversions of surface water and groundwater for cannabis cultivation throughout California, in all 14 Regions. Numeric instream flow requirements are developed at compliance gages for the 14 Regions.

Narrative Instream Flow Requirements

Instream Flow Requirements for Surface Water Diversions

1. Surface water instream flow Requirements apply to anyone diverting water for cannabis cultivation from a waterbody. A waterbody is defined as any significant accumulation of water, such as: lakes, ponds, rivers, streams, creeks, springs or seeps³⁰, artesian wells, wetlands, and canals. Surface water instream flow Requirements also apply to water diverted from a subterranean stream flowing through a known and definite channel.

2. The instream flow Requirements and forbearance period listed in this section shall not apply to retail water suppliers, as defined in Section 13575 of the Water Code³¹, whose primary beneficial use is

municipal or domestic, unless any of the following circumstances are present:

- a. the retail water supplier has 10 or fewer customers;
- b. the retail water supplier delivers 10 percent or more of the diverted water to one or more cannabis cultivator(s) or cannabis cultivation site(s), as established by an assessor's parcel number;
- c. 25 percent or more of the water delivered by the retail water supplier is used for cannabis cultivation; or
- d. a cannabis cultivator and the retail water supplier are affiliates, as defined in California Code of Regulations, title 23, section 2814.20.

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.

4. The authorized surface water diversion period is November 1 through March 31. During this diversion period, cannabis cultivators may only divert surface water for cannabis cultivation when water is available for diversion under the cannabis cultivator's priority of right and the applicable Numeric Flow Requirement (Section 4) is met at the assigned compliance gage. This includes direct diversion and diversion to storage. Numeric instream flow Requirements are established throughout the State and are calculated for the majority of USGS National Hydrologic Database plus 2 stream reaches where the USGS flow modeling data are available.

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.

30 A spring or seep is a place where water flows out of the ground. A spring or seep may flow the whole year or part of the year. Surface water instream flow Requirements apply to both natural springs and seeps and springs and seeps that are modified to improve production such as, installing piping and spring boxes/wells.

³¹ Under Water Code section 13575(b)(5), "Retail water supplier" means any local entity, including a public agency, city, county, or private water company that provides retail water service.

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.

Cannabis cultivators claiming, pursuant to Business and Professions Code section 26060.1, that a spring does not flow off their property by surface or subterranean means in the absence of diversion, may request an exemption from the minimum of 50 percent bypass requirement. 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 types³². The substantial evidence must be documented by a qualified professional. For purposes of this Requirement, qualified professionals include California-registered Professional Geologists or other classifications of professions approved by the Deputy Director for Water Rights (Deputy Director). A list of qualified professionals that may document the substantial evidence required per this Requirement will be maintained on the Water Rights section of the State Water Board's Cannabis Cultivation webpage³³. The Deputy Director may require additional information from the cannabis cultivator to support the request. If the Deputy Director concurs with the evidence provided, the cannabis

cultivator may be exempted from the Policy's Requirement to bypass a minimum of 50 percent of the surface water flow. Compliance with the Policy's minimum monthly flow Requirement (Narrative Flow Requirement 4) shall still apply. Notwithstanding such an exemption, all other applicable Requirements of this Policy remain in force.

6. From November 1 through December 14 of each year, the surface water diversion period shall not begin until after seven consecutive days in which the surface waterbody's real-time daily average flow is greater than the Numeric Flow Requirement (applicable minimum monthly instream flow Requirement in Section 4). The first day of the seven consecutive days must occur on or after November 1. After the seventh consecutive day with average flow greater than the Numeric Flow Requirement, surface water diversions may occur on any subsequent days in which the real-time daily average flow is greater than the Numeric Flow Requirement (applicable minimum monthly instream flow Requirement in Section 4). For example, if the daily average flows on each day from November 1 through November 7 of a given year are greater than the Numeric Flow Requirement for November (applicable November monthly minimum flow Requirement), diversion may begin on November 8 if the daily average flow on November 8 is also greater than the November Numeric Flow Requirement. From December 15 through March 31 of each surface water diversion period, surface water diversions may occur on any day in which the surface waterbody's real-time daily average flow is greater than the Numeric Flow Requirement (applicable minimum monthly instream flow Requirement).

³² Including during any precipitation and runoff events.

³³ State Water Board's Cannabis Cultivation webpage:

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

7. The State Water Board has developed Numeric instream flow Requirements (minimum instream flow requirements) for each compliance gage in Section 4, Table 1 through Table 14, to ensure that individual and cumulative effects of water diversion and discharge associated with cannabis cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability. If the individual and cumulative effects of diversions result in unanticipated impacts, however, the State Water Board may revise the narrative and/or numeric instream flow Requirements to better protect instream resources, habitat, and natural flow variability.

Requirements for Groundwater Diversions

8. This Policy establishes a low flow threshold, calculated by applying the New England Aquatic Base Flow Standard, as one mechanism to help monitor whether groundwater diverters are having a cumulative negative impact on surface flows. The State Water Board may develop additional requirements for groundwater diversions for cannabis cultivation in locations where there are a significant number of groundwater diversions or locations where significant numbers of surface water diverters are switching to groundwater diversions and those diversions have the potential to have negative localized impact on surface flows.

9. The instream flow Requirements listed in narrative flow Requirement 8 (low flow threshold) shall not apply to retail water suppliers, as defined in Section 13575 of the Water Code³⁴, whose primary beneficial use is municipal or domestic, unless any of the following circumstances are present:

- a. the retail water supplier has 10 or fewer customers;
- b. the retail water supplier delivers 10 percent or more of the diverted water to one or more cannabis cultivator(s) or cannabis cultivation site(s), as established by an assessor's parcel number;
- c. 25 percent or more of the water delivered by the retail water supplier is used for cannabis cultivation;
or
- d. a cannabis cultivator and the retail water supplier are affiliates, as defined in California Code of

Regulations, title 23, section 2814.20.

³⁴ Water Code Chapter 7.5. Water Recycling Act of 1991, Section 13575(b)(5) “Retail water supplier” means any local entity, including a public agency, city, county, or private water company that provides retail water service.

Gage Installation, Maintenance, and Operation Requirements

The Deputy Director for Water Rights (Deputy Director) may require cannabis cultivators to install and operate a local telemetry gage in ungaged watersheds or localized watershed areas if the Deputy Director determines that use of the assigned compliance gage does not adequately protect instream flows or does not adequately represent the localized water demand. The Deputy Director may also require the installation and operation of a local telemetry gage in watersheds with no gage assignment if the Deputy Director determines that a gage is necessary to adequately protect instream flows.

Cannabis cultivators shall ensure that gages required by the Deputy Director are installed, maintained, and operated by a qualified professional. For purposes of this Requirement, qualified professionals include California-registered Professional Civil Engineers, or other classifications of professions approved by the Deputy Director. A list of qualified professionals that may document compliance with this Requirement will be maintained in the Water Rights section of the State Water Board’s Cannabis Cultivation webpage³⁵. Gage equipment shall meet the applicable technical specifications for telemetered measuring devices in California Code of Regulations, title 23, section 933, that apply to diversions of over 10,000 acre-feet per year or more. Gages shall record data at a minimum of 15-minute intervals and report the recorded real-time data hourly, at a minimum, via a public website designated by the State Water Board’s Division of Water Rights (Division of Water Rights).

Cannabis cultivators, or an entity acting on behalf of cannabis cultivators, shall submit a gage operation and maintenance (O&M) plan prepared by a qualified professional, as defined in the preceding paragraph, to the Deputy Director or the Deputy Director’s designee for approval. At a minimum, the gage O&M plan shall include qualifications and names of entities responsible for gage installation, maintenance, and operation; gage specifications and accuracy; gage location; gage installation procedures that ensure accurate operation during the wet season and stability during high flow events; stream flow measurement procedures for development of rating curves that represent wet season flows; telemetry equipment; and an O&M schedule and procedures. The Deputy Director may require additional information from the cannabis cultivator to support the request. The Deputy Director may include additional requirements as part of any approval of a gage O&M plan.

Prior to October 31, during each water year of gage operation, an annual maintenance and operation summary report prepared by a qualified professional, as defined above in this Requirement, shall be submitted to the Division of Water Rights that includes, at a minimum: qualifications and names of entities responsible for maintenance and operation; maintenance activities or operational issues for the prior water year of operation; quality assured gage stage and flow data collected and analyzed for prior water year; rating curves for prior and upcoming water year of operation; data collected to establish rating curves for prior and upcoming water year of operation; and any anticipated maintenance plans or operational issues for the upcoming water year. The gage data shall be provided to the Division of Water Rights in a format retrievable and viewable using Microsoft Excel, Microsoft Access, or other software program authorized by the Deputy Director.

FINDINGS

The State Water Resources Control Board (State Water Board) finds that:

NORTH COAST REGIONAL WATER BOARD BASIN PLAN, POLICIES, AND TMDLS

30. The North Coast Regional Water Board adopted the Support of Restoration in the North Coast Region Resolution No. R1-2015-0001 (Restoration Policy) to support the implementation of restoration projects for the purpose of eliminating, reducing, or ameliorating a variety of conditions that can negatively impact aquatic ecosystems, including but not limited to: water pollution, eutrophication, desiccation, habitat simplification, species displacement, migration barriers, erosion from diverted streams, riparian zone disturbance, effects of climate change, or other impairments to the beneficial uses of waters of the state. In many watersheds, the impact of past land use activities or so-called “legacy” problems may require decades to recover to their historic, natural, or functioning conditions. Some aquatic ecosystems have been so significantly altered that it is no longer reasonable or feasible to achieve historic conditions; but rather, restoration efforts must focus on establishing best achievable structure, function, and biodiversity.
31. The North Coast Regional Water Board Basin Plan includes the policy for the Implementation of the Water Quality Objectives for Temperature (Temperature Implementation Policy), which specifies that activities resulting in water temperature increases shall be addressed on a case-by-case basis to reduce impairments and prevent further impairment. The Temperature Implementation Policy directs staff to examine and address temperature when developing permits. At a minimum, any program or permit should implement temperature shade load allocations in areas subject to existing temperature total maximum daily loads (TMDLs), including EPA-established temperature TMDLs. To attain and maintain the water quality objectives for temperature, the Regional Water Board and its staff will implement programs and collaborate with others in such a manner as to prevent, minimize, and mitigate temperature alterations associated with sediment discharges and controllable water quality factors. Controllable water quality factors affecting water temperature include any anthropogenic activity which results in the removal of riparian vegetation, sediment discharges, impoundments and other channel alterations, reduction of instream summer flows, and the reduction of cold water sources. The Temperature Policy requires program implementation through adoption of WDRs.
32. The North Coast Region is home to numerous threatened and endangered species that are sensitive to excessive sediment, temperature fluctuations, and reduction of suitable habitat. The migration, spawning, reproduction, and early development of cold water fish such as salmon and trout species are impacted in the North Coast Region due to water quality impairments and other conditions. The National Marine Fisheries Service has listed southern Oregon/northern California coast Coho salmon, California coastal Chinook salmon, and northern California steelhead as threatened under the federal Endangered Species Act. The CDFW listed coho salmon as threatened in 2005.
33. Approximately 61-percent of the North Coast Region drains to sediment impaired rivers and streams (2006 Clean Water Act Section 303(d) list). Sediment TMDLs have been established by the USEPA for the Albion River, Big River, Middle Fork Eel River, North Fork Eel River, South Fork Eel River, Garcia River, Gualala River, Mattole River, Navarro River, Noyo River, Redwood Creek, Ten Mile River, Trinity River, South Fork Trinity River, and Van Duzen River. The establishment of TMDLs by the USEPA was conducted under the authority of the Clean Water Act and is equivalent to adoption of a TMDL as described in California Code of Regulations, title 14, section 916.9(a)(I).
34. The North Coast Regional Board adopted the TMDL Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region, (Sediment TMDL Implementation Policy) on November 29, 2004. The Sediment TMDL Implementation Policy directs the Executive Officer to use all available authority in pursuing sediment related compliance.
35. This General Order is consistent with the Basin Plan for the North Coast Region, the Temperature Implementation Policy and the Sediment TMDL Implementation Policy by requiring all Dischargers that are landowners of the cultivation site in the North Coast Region to develop Site Management

Plans identifying compliance with BPTC measures property-wide, including discharges from legacy activities (e.g., former timber harvest, road building, mining, etc.) at the site.

(Sections 36 & 37 reference SAN DIEGO REGIONAL WATER BOARD TMDL)

NON-POINT SOURCE POLICY

38. In May 2004, the State Water Board adopted the Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Policy). The purpose of the NPS Policy is to improve the state's ability to effectively manage nonpoint source pollution, conform to the requirements of the Clean Water Act, and comply with the Federal Coastal Zone Act Reauthorization Amendments of 1990. Polluted runoff from nonpoint sources accounts for more than 76 percent of the water bodies where TMDLs are required.
- a. The NPS Policy requires the Water Boards to regulate all nonpoint sources of pollution, using the administrative permitting authorities provided by the Porter-Cologne Water Quality Control Act. This General Order implements the NPS Policy by requiring BPTC measures for site development, cannabis cultivation, associated activities (e.g., site grading, road building, surface water diversion, etc.) that can contribute to nonpoint source pollution.
 - b. NPS pollution control implementation programs are a mechanism to achieve compliance with Basin Plan requirements. Pollution control implementation programs may be imposed upon a subbasin by the State or Regional Water Board, an individual Discharger, or a coalition of Dischargers. Alternatively, a pollution control implementation program may be developed by an individual Discharger, group of Dischargers, or landowners to address a water quality issue.
 - c. Implementation of the applicable BPTC measures contained in Attachment A will be protective of water quality for most cannabis cultivation activities. However, adherence to the BPTC measures does not assure compliance. The ultimate compliance evaluation is comparison of the effectiveness of BPTC measure implementation to the appropriate Basin Plan requirements. In some cases, the Discharger will have to implement multiple BPTC measures, or increase the density of BPTC measures to achieve water quality protection. In some cases, the activity cannot be performed without unacceptable water quality degradation. In those cases, the Regional Water Board may revoke the authorization under the General Order, require authorization under a site-specific order, or prohibit the activity from occurring.

APPLICATION/TERMINATION PROCESS AND FEES

39. The North Coast Regional Water Board and the Central Valley Regional Water Board have authorized discharges related to cannabis cultivation under Orders R1-2015-0023 and R5-2015-0113. **The State Water Board intends that regulatory coverage under an existing Regional Water Board general order will be terminated by the applicable Regional Water Board by July 1, 2018.** All existing Dischargers must apply for coverage under this General Order. (Some existing Dischargers may qualify for conditional exemption from the General Order; some previously exempted activities may need to register and/or enroll under this General Order.) All cannabis cultivation activity that requires discharge authorization as described herein, shall be authorized by this General Order, an appropriate ILRP WDR, a waiver of ILRP WDRs, or by a site-specific order if deemed necessary by the Regional Water Board Executive Officer.
40. Applicants or current Dischargers that do not comply with the conditional exemptions must comply with the setback and slope limits. A cultivation site is classified as moderate risk if any part of the disturbed area is located on a slope greater than 30 percent. Such Dischargers shall register as moderate risk and submit a *Site Erosion and Sediment Control Plan*. (See the plan description in the Provisions section of this General Order.) A cultivation site is classified as high risk if any part of the

disturbed area exists within the setback limits. Such Dischargers shall register as high risk, submit a *Disturbed Area Stabilization Plan*, and shall address the compliance issue as described below. (See the plan description in the Provisions section of this General Order.) Because such Dischargers pose a higher risk to water quality and will require a higher level of Regional Water Board oversight, they are subject to a higher application and annual fee. When the site is reconfigured to comply with the setbacks, the Discharger can request the Regional Water Board to reclassify the site to a lower risk level and allow a lower annual fee to be assessed.

41. Applicants seeking coverage under this General Order or that are required to register are required to pay an application fee as described below. Water Code section 13260(d)(1)(A) requires persons subject to waste discharge requirements to pay an annual fee established by the State Water Board. The application and annual fee schedule is presented in California Code of Regulations, title 23, section 2200 et seq.
 - a. Cannabis cultivation activities that comply with the conditions for personal use exemption described in the Exemptions for Certain Cultivation Activities section of this General Order are not required to apply or register the activities with the State Water Board or Regional Water Board. Dischargers that qualify for personal use exemption under this General Order are not required to pay an application fee or a subsequent annual fee. Some personal use exempt dischargers that divert water may be subject to water rights registration requirements. Those dischargers shall use the online application and will receive a Notice of Exemption from this General Order.
 - b. Cannabis cultivation activities that occur within a structure with a permanent roof, a permanent relatively impermeable floor (e.g., concrete or asphalt paved), and that discharge all industrial wastewater generated to a community sewer system consistent with the sewer system requirements, are required to register on-line to obtain a notice of exemption for use in obtaining the CDFA cultivation license. Indoor cannabis cultivation with a sewer discharge must pay an application fee only.
 - c. Cannabis cultivation activities that occur within a structure with a permanent roof, a permanent relatively impermeable floor (e.g., concrete or asphalt paved), but discharge irrigation tailwater or hydroponic wastewater, to an on-site wastewater treatment system (such as septic tank and leach field or to land) must obtain regulatory authorization for the wastewater discharge (e.g., WDRs, conditional waiver of WDRs, or other permit mechanism). Indoor cannabis cultivation with an onsite treatment system are required to register on-line, pay an application fee, and a fee for the wastewater WDRs issued by the Regional Water Board.
 - d. Conditionally exempt activities that comply with the conditions described in the Exemptions for Certain Cultivation Activities section of this General Order are required to register on-line and pay an application fee. Existing Dischargers (under Orders R1-2015-0023, R5-2015-0113, or other fee paying WDRs) are required to transition coverage (enroll) under the General Order. Transitioning Dischargers are required to apply on-line. They do not pay an application fee; they continue to pay their annual fee as appropriate from the general order fee schedule (the fee may change based on site conditions). Some Dischargers may qualify for, or be required to obtain coverage under an ILRP WDR, ILRP conditional waiver of WDRs, or a site-specific WDRs order, and pay fees associated with those permits. Enrollees directed to those orders shall contact the appropriate Regional Water Board for instructions on application procedures. Such Dischargers shall also comply with the applicable water rights registration process described herein as applicable.
 - e. New facilities that are classified as either Tier 1 or Tier 2 are required to enroll under the General Order. New facilities are required to apply on-line and pay an application fee. The application fee

serves as the first year's annual fee; Dischargers will be billed on an annual basis.

- f. Tier 1 and 2 sites shall be characterized for risk based on site conditions. Risk is defined in Table 1 as low, moderate, or high. Because moderate and high risk sites will require greater level of regulatory oversight, the fees for those risk levels are higher, reflecting the additional cost to achieve water quality protection.
 - i. Low Risk – Comply with the slope requirements and setbacks. Low risk sites are deemed to be a lower threat to water quality.
 - ii. Moderate Risk – Comply with the setback requirements but exist on slopes greater than 30 percent and less than 50 percent. The higher slopes will require implementation of more BPTC measures, more monitoring of their effectiveness, and more maintenance activities to ensure the BPTC measures are effective.
 - iii. High Risk – Are facilities that have any portion of their disturbed area located within the setback requirements, with the exception of activities authorized by CDFW with a Lake or Streambed Alteration Agreement or Clean Water Act section 404 permits, are classified as high risk and will be assessed the high-risk fee until the activities comply with the setback requirements. It is the Discharger's responsibility to notify the Regional Water Board of compliance with the setback requirements to reassess the annual fee.
42. To apply for coverage under this General Order or to assert conditional exemption from the General Order and register the cultivation activity, the Discharger shall submit an application through the Internet as described in the Application Procedure section of this General Order.
- a. The application requires the Discharger to self-certify that all applicable BPTC measures are being implemented, or will be implemented by **November 15, following the enrollment date**. Upon submittal of the application, the Discharger will obtain a notice of receipt. Applicants that cannot implement all applicable BPTC measures by November 15, following their enrollment date, shall submit to the Regional Water Board Executive Officer a *Site Management Plan* that includes a time schedule and scope of work for use by the Regional Water Board in developing a compliance schedule as described in Attachment A.
 - b. The notice of receipt will expire within **30 days** of issuance if the Discharger fails to complete the application by submitting the application fee to the State Water Board. (Dischargers that are currently enrolled in the North Coast Regional Water Board or the Central Valley Regional Water Board orders do not pay an additional fee as described in the Application/Termination Process and Fees section of this General Order.)
 - c. Technical reports shall be submitted to the appropriate Regional Water Board via e-mail as described in the notice of receipt and Attachment B monitoring and reporting program (MRP). The MRP is attached hereto and is made part of this General Order by reference. Enrollees may be directed to upload reports via the Internet in the future. See the Provisions section of this General Order for guidance on the report(s) contents.
 - d. Upon receipt of an application and fee, Dischargers will receive documentation of application/enrollment for use in obtaining a CDFA cultivation license.
 - i. Conditionally exempt registrations will receive an acknowledgment of registration and a statement indicating that they have certified that their activities comply with the applicable conditions and are conditionally exempt.

- ii. New Dischargers will obtain a notice of applicability after the application fee is paid.
 - iii. Enrollees transitioning from an existing Regional Water Board order will receive a notice of applicability upon application for transfer to this General Order.
43. Dischargers that want to terminate coverage under this General Order shall submit a Notice of Termination (NOT), provided in Attachment C, which is attached hereto and is made part of this General Order by reference. The NOT shall include a Site Closure Report (see the plan description in the Provisions section of this General Order) and a final monitoring report. The Regional Water Board reserves the right to inspect the site before approving an NOT.