

Excerpt of Narrative Flow Requirements from Cannabis Cultivation Policy

The following is an excerpt from the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation (Cannabis Cultivation Policy): Attachment A, Section 3, pages 49 through 52*. The full Cannabis Cultivation Policy is available online at: https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/final_cannabis_policy_with_att_a.pdf

Narrative Flow Requirements:

Instream Flow Requirements for Surface Water Diversions

1. **Applicability:** 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, springs¹, 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. **Retail Water Suppliers²:** 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 Code³, 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 and delivers water that is used for cannabis cultivation;
 - 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. **Exempt Springs:** Cannabis cultivators claiming, pursuant to Business and Professions Code section 26060.1(a)(2)(A)(iv) or section 26060.1(a)(2)(B)(iii), that a spring or artesian well does not flow off their property by surface or subterranean (subsurface) means in the absence of diversion, may request an exemption from the Policy's Narrative Instream Flow Requirements 4 (Surface Water Dry Season Forbearance Period) and 5 (Surface Water Wet Season Diversion Period). When requesting such an exemption, cannabis cultivators shall provide substantial evidence demonstrating that, in the absence of diversions, the spring or artesian well does not have surface or subsurface hydrologic connectivity to a surface water at any time of year during all water year types⁴. 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

¹ A spring is an area where there is concentrated discharge of groundwater that flows at the ground surface. A spring may flow any part of the year. For the purpose of this Policy, a spring does not have a defined bed and banks. Surface water instream flow Requirements apply to both natural springs and springs that are modified to improve production such as, installing piping and spring boxes/wells.

² Business and Professions Code section 26060.1(a)(1)(B).

³ 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.

⁴ Including during any precipitation and runoff events.

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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 webpage⁵. The Deputy Director may require additional information from the cannabis cultivator to support the request. If, after reviewing the submitted evidence and analysis, the Deputy Director concurs that the cannabis cultivator has made the required showing, the cannabis cultivator may be exempted from the Policy's Narrative Instream Flow Requirements 4 and 5. Springs or artesian wells that are deemed exempt shall comply with the Policy's 50 percent visual bypass requirement (Narrative Instream Flow Requirement 6) to support aquatic and riparian habitat. In addition, springs or artesian wells that are deemed exempt shall be subject to the Requirements for Groundwater Diversions (Narrative Instream Flow Requirement 8) to address the potential cumulative impacts of groundwater diversions, to which diversions from the spring or artesian well may contribute. Notwithstanding such exemptions, all other applicable Requirements of this Policy remain in force.

4. **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.
 - a. The following requirements apply only to cannabis cultivators diverting under a valid water right or claim of right and without authorized storage:
 - i. The first year of the Surface Water Dry Season Forbearance Period (April 1, 2018 through October 31, 2018) is waived. Cannabis cultivators subject to Requirement 4.a. may only divert during this period in a manner consistent with their permit/license or claim of right. All other applicable requirements of the Policy shall remain in force.
 - ii. Cannabis cultivators subject to Requirement 4.a shall file for a Cannabis SIUR or submit an application for an appropriate water right permit to obtain storage sufficient to support their cannabis cultivation during the forbearance period prior to diverting water for cannabis cultivation during the 2018 forbearance period.
 - iii. As soon as possible after storage has been authorized, following the conclusion of the winter period, cannabis cultivators subject to Requirement 4.a shall begin installing and diverting to off-stream storage to prepare for a potential curtailment during the dry season of 2018 (triggered by the Aquatic Base Flow Numeric Instream Flow Requirement).
 - iv. Requirement 4 shall apply with full force to cannabis cultivators described in Requirement 4.a who fail to comply with Requirement 4.a.ii or 4.a.iii.
5. **Surface Water Wet Season Diversion Period:** 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.

⁵ State Water Board's Cannabis Cultivation webpage: <http://www.waterboards.ca.gov/cannabis/>

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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 October 25. 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 Instream Flow Requirement (applicable minimum monthly instream flow Requirement in Section 4)⁶.

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.

6. **Surface Water Flow Bypass:** In addition to Narrative Flow Requirement 5, at all times 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. The surface water flow bypass requirement applies to cannabis cultivators diverting under a riparian or a pre-1914 appropriative claim of right and without authorized storage even if they qualify for the 2018 Surface Water Dry Season Forbearance Period waiver (Requirement 4.a.)
7. **Numeric Instream Flow Requirements:** 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 and Springs Qualifying for an Exemption under Narrative Instream Flow Requirement 3 (Exempt Springs)

8. **Aquatic Base Flow:** This Policy establishes an Aquatic Base Flow, calculated by applying the New England Aquatic Base Flow Standard, as one mechanism to help

⁶ For example, if the daily average flows on each day from October 27 through November 2 of a given year are greater than the Numeric Instream Flow Requirement for November (applicable November monthly minimum flow Requirement), diversion may begin on November 3 if the daily average flow on November 3 is also greater than the November Numeric Instream 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 Instream Flow Requirement (applicable minimum monthly instream flow Requirement).

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monitor whether groundwater diverters and diverters from exempt springs are having a cumulative negative impact on surface flows. The State Water Board may develop additional requirements for groundwater diversions and diversions from exempt springs for cannabis cultivation in locations where there are a significant number of groundwater diversions and/or diversions from exempt springs 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. **Retail Water Suppliers**⁷: The instream flow Requirements listed in narrative flow Requirement 8 (Aquatic Base Flow) shall not apply to retail water suppliers, as defined in Section 13575 of the Water Code⁸, 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 and delivers water that is used for cannabis cultivation;
 - 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.

⁷ Business and Professions Code section 26060.1(a)(1)(B).

⁸ 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.