

**State of California
Office of Administrative Law**

In re:
State Water Resources Control Board

Regulatory Action:

Title 23, California Code of Regulations

Adopt sections: 2925

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11353

OAL Matter Number: 2017-1102-01

OAL Matter Type: Regular (S)

On October 17, 2017, the State Water Resources Control Board adopted Resolution No. 2017-0063, adopting the *Cannabis Cultivation Policy - Principles and Guidelines for Cannabis Cultivation*, in accordance with California Water Code section 13149.

OAL approves this regulatory action pursuant to section 11353 of the Government Code.

Date: December 18, 2017



Kevin D. Hull
Senior Attorney

For: Debra M. Cornez
Director

Original: Eileen Sobeck, Executive
Director

Copy: Daniel Schultz

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR (See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2017-1102-01S	

For use by Office of Administrative Law (OAL) only

2017 NOV -2 P 4: 23
OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

DEC 18 2017
1:48 PM.

NOTICE	REGULATIONS
--------	-------------

AGENCY WITH RULEMAKING AUTHORITY
State Water Resources Control Board

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Cannabis Cultivation Policy	TITLE(S) 23	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Daniel Schultz	TELEPHONE NUMBER (916) 323-9392	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER
			PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Cannabis Cultivation Policy - Principles and Guidelines for Cannabis	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
--	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT Division 3, Chapter 22, Section 2925
AMEND
REPEAL
TITLE(S) 23

3. TYPE OF FILING
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input checked="" type="checkbox"/> Other (Specify) Government Code § 11353 <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
--

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input checked="" type="checkbox"/> Effective other (Specify) Upon OAL Approval (Gov't Code § 11353)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify)

7. CONTACT PERSON Daniel Schultz	TELEPHONE NUMBER (916) 323-9392	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) daniel.schultz@waterboards.ca.gov
-------------------------------------	------------------------------------	-----------------------	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 11/1/17
TYPED NAME AND TITLE OF SIGNATORY Les Grober, Deputy Director, Division of Water Rights	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED
DEC 18 2017
Office of Administrative Law

**CONCISE SUMMARY OF REGULATORY PROVISIONS
FOR THE CANNABIS CULTIVATION POLICY – PRINCIPLES AND GUIDELINES
FOR CANNABIS CULTIVATION**

California Code of Regulations

Title 23. Waters

Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

Chapter 22. State Policy for Water Quality Control

§2925. Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation

On October 17, 2017, the State Water Resources Control Board adopted Resolution No. 2017- 0063, adopting the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* (Cannabis Cultivation Policy) in accordance with California Water Code section 13149.

The Cannabis Cultivation Policy establishes principles and guidelines (requirements) for cannabis cultivation activities to protect water quality and instream flows. The purpose of the Cannabis Cultivation Policy is to ensure that the diversion of water and discharge of waste associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs. The Cannabis Cultivation Policy applies to the following cannabis cultivation activities throughout California:

- Commercial Recreational
- Commercial Medical
- Personal Use Medical

The Cannabis Cultivation Policy does not apply to recreational cannabis cultivation for personal use, which is limited to six plants under the Adult Use of Marijuana Act (Proposition 64, approved by voters in November 2016)¹.

¹ Recreational cannabis cultivation for personal use as defined in Health and Safety Code section 11362.1(a)(3) and section 11362.2.

State Water Resources Control Board

Cannabis Cultivation Policy

Principles and Guidelines for Cannabis Cultivation

October 17, 2017

Table of Contents	
Acronyms and Abbreviations	3
POLICY OVERVIEW	5
GEOGRAPHIC AREA COVERED BY POLICY	7
REQUIREMENTS FOR CANNABIS CULTIVATION	9
Flow and Gaging Requirements	10
Surface Water Diversion Forbearance Period	10
Wet Season Surface Water Instream Flow Requirements.....	10
Maintain High Flow Events.....	11
Groundwater Requirements.....	11
Compliance Gages and Requirements.....	12
POLICY IMPLEMENTATION AND COMPLIANCE	12
Overview	12
General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order).....	13
Determination of Total Disturbed Area.....	14
Risk Determination	14
Exemptions for Certain Cultivation Activities.....	15
Personal Use Exemption	15
Conditional Exemption	16
Application Process and Fees	17
Third Party Programs	18
Cannabis Small Irrigation Use Registration	18
CDFA's CalCannabis Cultivation Licensing Program.....	19
Continuing Authority to Amend Policy	19
Instream Flow Dedications	19
Local Cooperative Solutions	19
Tribal Authority Savings Clause.....	20
ENFORCEMENT	20
Continuing Authority to Amend Water Rights.....	20
Prohibition Against Waste and Unreasonable Use of Water	21
Protection of Public Trust Resources	21
Incorporation of Policy Requirements in CDFCA Cultivation Licenses.....	22
Watershed Enforcement Team	22
Enforcement Tools.....	22
Informal Enforcement.....	22

Formal Enforcement22

REFERENCES:25

Attachments

Attachment A: Definitions and Requirements for Cannabis Cultivation

Acronyms and Abbreviations

ACL	Administrative Civil Liability
Antidegradation Policy	State Water Board Resolution 68-16, the Statement of Policy with Respect to Maintaining High Quality of Waters in California
Army Corps	United States Army Corps of Engineers
AUMA	Adult Use of Marijuana Act of 2016
Basin Plan	Water Quality Control Plan
BOF	Board of Forestry
BPTC	Best Practicable Treatment or Control
BPC	California Business and Professions Code
CAL FIRE	California Department of Forestry and Fire Protection
CAO	Cleanup and Abatement Orders
CDFA	California Department of Food and Agriculture
Cannabis Policy	Cannabis Cultivation Policy, Principles and Guidelines for Cannabis Cultivation
CIWQS	California Integrated Water Quality System
CUA	Compassionate Use Act of 1996
CEQA	California Environmental Quality Act
CDEC	California Data Exchange Center
CDFA	California Department of Food and Agriculture
CDFW	California Department of Fish and Wildlife
CDO	Cease and Desist Order
CHRIS	California Historical Resources Information System
CWA	Clean Water Act
Deputy Director	Deputy Director for the Division of Water Rights
DPR	Department of Pesticide Regulation
DPS	Distinct Population Segments
DTE	Distinct Taxonomic Entities
DWR	California Department of Water Resources
e.g.	Latin <i>exempli gratia</i> (for example)
ESA	Federal Endangered Species Act
ESU	Evolutionary Significant Unit
Executive Officer	Executive Officer of the Regional Water Quality Control Board
FER	Flashy, Ephemeral Rain hydrologic regime
FPR	Forest Practice Rules
General Order	General Waste Discharge Requirements for Discharges of Waste associated with Cannabis Cultivation Activity
GW	Groundwater hydrologic regime
HELP	High Elevation and Low Precipitation hydrologic regime
HSR	High-Volume Snowmelt and Rain hydrologic regime
HUC	Hydrologic Unit Code
HSC	Health and Safety Code
ILRP	Irrigated Lands Regulatory Program
LSA Agreement	Lake and Streambed Alteration Agreement
LSR	Low-Volume Snowmelt and Rain hydrologic regime
LTO	Licensed Timber Operator
MCRSA	Medical Cannabis Regulation and Safety Act
MMRSA	Medical Marijuana Regulation and Safety Act

NCRO	Department of Water Resources, North Central Region Office
NHD	National Hydrography Database
NHDPlusV2	National Hydrography Database Plus Version 2
NMP	Nitrogen Management Plan
NOA	Notice of Applicability
NONA	Notice of Non-Applicability
NOT	Notice of Termination
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
NPS	Nonpoint Source Pollution Control Program
NRO	Department of Water Resources, North Region Office
NTU	Nephelometric Turbidity Units
OWTS	Onsite Wastewater Treatment System
PGR	Perennial Groundwater and Rain hydrologic regime
RSG	Rain and Seasonal Groundwater hydrologic regime
Regional Water Board	Regional Water Quality Control Board
Road Handbook	Handbook for Forest, Ranch, and Rural Roads
RPF	California Registered Professional Forester
RWD	Report of Waste Discharge
State Water Board	State Water Resources Control Board
SB	Senate Bill
SCCWRP	Southern California Coastal Water Research Project
SCR	Site Closure Report
SIC	Standard Industrial Code
SDR	Small Domestic Registrations
SEPs	Supplemental Environmental Projects
SIUR	Small Irrigation Use Registrations
SM	Snowmelt hydrologic regime
SW-CGP	Storm Water Construction General Permit
SW-IGP	Storm Water Industrial General Permit
SWPPP	Storm Water Pollution Prevention Plan
THP	Timber Harvest Plan
TMDL	Total Maximum Daily Load
UC Davis	University of California, Davis
US	United States
USBR	United States Bureau of Reclamation
U.S. EPA	United States Environmental Protection Agency
USGS	United States Geological Survey
Water Boards	State Water Board and Regional Water Boards

POLICY OVERVIEW

The purpose of this Cannabis Cultivation Policy (Policy) is to ensure that the diversion of water and discharge of waste associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs. This Policy applies to the following cannabis cultivation activities throughout California:

- Commercial Recreational
- Commercial Medical
- Personal Use Medical

This Policy does not apply to recreational cannabis cultivation for personal use, which is limited to six plants under the Adult Use of Marijuana Act (Proposition 64, approved by voters in November 2016)¹.

Cannabis cultivation legislation enacted California Water Code (Water Code) section 13149, which directs the State Water Board, in consultation with the California Department of Fish and Wildlife (CDFW), to adopt interim and long-term principles and guidelines for the diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows. The legislation requires the State Water Board to establish these principles and guidelines as part of a state policy for water quality control². Per Water Code section 13149, the principles and guidelines:

- shall include measures to protect springs, wetlands, and aquatic habitats from negative impacts of cannabis cultivation; and
- may include requirements that apply to groundwater diversions where the State Water Board determines those requirements are reasonably necessary.

Additionally, Business and Professions Code section 26060.1(b) requires that these principles and guidelines be included as conditions in cannabis cultivation licenses issued by the California Department of Food and Agriculture (CDFA). The State Water Board has primary enforcement responsibility for the principles and guidelines and shall notify CDFA of any enforcement action taken³.

This Policy establishes principles and guidelines (hereinafter "Requirements") for cannabis cultivation activities to protect water quality and instream flows. The Requirements established by this Policy will be incorporated into and implemented through five regulatory programs:

- CDFA's CalCannabis Cultivation Licensing Program⁴;

¹ Recreational cannabis cultivation for personal use as defined in Health and Safety Code section 11362.1(a)(3) and section 11362.2.

² Water Code section 13149(b)(2). *The board shall adopt principles and guidelines under this section as part of state policy for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7.* Water Code section 13142 outlines specific requirements for a state policy for water quality control, which this Policy implements.

³ Water Code section 13149(b)(5).

⁴ Business and Professions Code section 26060(b)(1). The CalCannabis Cultivation Licensing Program is anticipated to begin accepting applications for cannabis cultivation licenses by January 1, 2018.

- State Water Board's Cannabis General Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order) or any Waste Discharge Requirements addressing cannabis cultivation activities adopted by a Regional Water Quality Control Board (Regional Water Board);
- State Water Board's General Water Quality Certification for Cannabis Cultivation Activities (Cannabis General Water Quality Certification);
- State Water Board's Cannabis Small Irrigation Use Registration (Cannabis SIUR); and
- State Water Board's Water Rights Permitting and Licensing Program.

The Requirements for cannabis cultivation are located in Attachment A. Policy background information and justifications for the Requirements are located in the Cannabis Cultivation Policy Staff Report.

Water Code section 13149 authorizes the State Water Board to develop both interim and long-term requirements and update them as necessary. It is anticipated that the State Water Board will update this Policy over time to modify or add requirements to address cannabis cultivation impacts, as needed.

The State Water Board holds the dual mandates of allocating surface water rights and protecting water quality. The State Water Board is the state agency with primary authority over water quality under California's Porter-Cologne Water Quality Control Act and the federal Clean Water Act. Under these authorities, the State Water Board may adopt water quality objectives, including flow objectives, and programs of implementation to achieve these objectives. California law directs the State Water Board and Regional Water Boards (collectively Water Boards) to adopt water quality control plans and policies that identify existing and potential beneficial uses of waters of the state and establish water quality objectives to protect these uses.

This Policy meets the requirements of Water Code section 13149(b)(1) and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations, title 14, section 15308⁵.

The State Water Board allocates water through an administrative system that is intended to maximize the beneficial uses of water while protecting the public trust, serving the public interest, and preventing the waste and unreasonable use or method of diversion of water. The Water Boards implement water quality control plans through both water rights- and water quality-related programs. For example, Water Code section 1258 requires the State Water Board to consider water quality control plans when acting upon applications to appropriate water and the State Water Board may impose such conditions as it deems necessary to implement such plans. Water Code section 13263(a) requires waste discharge requirements to implement applicable water quality control plans, including terms to ensure that water quality objectives will be met. In issuing water quality certifications and waste discharge requirements, the Water

⁵ California Code of Regulation section 15308. Actions by Regulatory Agencies for Protection of the Environment. *Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.*

Boards include conditions necessary to ensure the activities will comply with applicable water quality objectives, including flow objectives⁶. The State Water Board also may implement flow objectives by specifying minimum bypass flows as a condition of a water right.

GEOGRAPHIC AREA COVERED BY POLICY

California is a large and geographically diverse state, covering 163,696 square miles, and spanning over 800 miles of coastline. California's multiple mountain ranges and valleys result in highly variable climate, precipitation and drainage patterns. To account for the state's size and geographic diversity, this Policy designates 14 Cannabis Cultivation Policy regions: Klamath, Upper Sacramento, North Eastern Desert, North Coast, Middle Sacramento, Southern Sacramento, North Central Coast, Tahoe, South Central Coast, San Joaquin, Mono, Kern, South Coast, and South Eastern Desert (Figure 1). This Policy establishes water quality and instream flow Requirements statewide. These include instream flow Requirements that must be met or exceeded at specific compliance flow gages when water is being diverted for cannabis cultivation. The Policy identifies 14 regions, and identifies nine regions as priority regions that support anadromous salmonids. The priority regions are: Klamath, Upper Sacramento, North Coast, Middle Sacramento, Southern Sacramento, North Central Coast, South Central Coast, San Joaquin, and South Coast.

⁶ See Wat. Code § 13377; Cal. Code of Regs., tit. 23, § 3859.