

NORTH COAST REGIONAL WATER BOARD

Cannabis & Compliance Assurance Division

Programs:

*Cannabis Cultivation Regulation
Enforcement*

FY 2018-2019 WORK PLAN

Division Chief: Kason Grady

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1.0 BACKGROUND

The Cannabis and Compliance Assurance Division includes three units, two Cannabis Regulatory Units that implement the Cannabis Cultivation Regulatory Program and one Compliance Assurance Unit that implements the Enforcement Program and provides specialized enforcement assistance to all programs throughout the office.

Dedicated enforcement staff ensure that water quality violations are prioritized for direct actions including Cleanup and Abatement Orders and monetary penalties that are firm, fair, and consistent with the Water Boards Enforcement Policy.

1.1 Cannabis Cultivation Waste Discharge Regulatory Program

Cannabis cultivation in California has grown dramatically in recent years and is often located in sensitive environmental areas where the activities create significant impacts to water quality. Waste discharges from cultivation sites include sediment, irrigation runoff, fertilizers, pesticides/herbicides, petroleum, agricultural related chemicals, cultivation related waste, refuse, and human waste. Construction of access roads has resulted in significant erosion and sediment discharges to waterbodies.

The North Coast Cannabis Cultivation Regulatory Program received initial funding in FY 2014-15, developed the first water quality order regulating cannabis cultivation in the state in 2015 (Order No. R1-2015-0023, Regional Cannabis Order). The State Water Resources Control Board (State Water Board), in consultation with California Department of Fish and Wildlife (CDFW), California Department of Food and Agriculture (CDFA), and Regional Water Quality Control Boards (Regional Water Boards), developed the Cannabis Cultivation Policy Principles and Guidelines for Cannabis Cultivation (the Policy) in accordance with Water Code section 13149 to protect water quality and instream flows. On October 17, 2017, the Policy was adopted by the State Water Board along with Order WQ-2017-0023-DWQ General Waste Discharge Requirements and Waiver of Waste Discharger Requirements for Discharges of Waste Associated with Cannabis Cultivation (the Statewide Cannabis General Order). The geographic scope of the Policy and Statewide Cannabis General Order encompasses the entire state with priority regions established for areas with streams bearing anadromous habitat.

The Policy contains guidelines for evaluating whether a cannabis cultivation site may affect instream flows and water quality needed for the protection of aquatic habitat. It prescribes protective criteria that limit the season of diversion, establish minimum flows at specific flow gages, and establish requirements related to water diversion and waste discharge. As an alternative to the criteria specified in the Policy, the Policy allows site specific studies to be conducted to evaluate whether different protective criteria could be applied. The Policy provides for a watershed-based approach to evaluate the cumulative effects of multiple diversions on instream flows within a watershed as an alternative to evaluating water diversion projects on an individual basis. Enforcement requirements contained in the Policy include a framework for compliance assurance through existing water rights and water quality programs, and descriptions of available enforcement actions and procedures.

Implementation of both the Regional Cannabis Order and the Statewide Cannabis General Order is the Cannabis Cultivation Waste Discharge Regulatory Program staff's primary core activity.

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Other Program Activities

- *Interagency Coordination with the State Water Board, Other Regional Boards, CDFW, CDFA, and Local Agencies*
- *Education and Outreach: to the Public, Media, and Industry and Watershed Groups*
- *Participate in the Interagency Enforcement Inspections with the California Department of Fish and Wildlife (CDFW), Local Regulatory Agencies and Local Law Enforcement*
- *Enforcement Actions*
- *Hiring and Organizational Restructuring*
- *Developing Technology to Automatically Identify Cannabis Cultivation Sites Using Satellite Imagery*
- *Collaborating with the State Water Board on Implementation of a Contract to Enhance and Upgrade the Cannabis Identification and Prioritization System (CIPS)*

1.2 Enforcement

The enforcement program is a strategic use of resources to address environmental crimes throughout the North Coast Region. The Regional Water Boards emphasis is on ensuring water quality protection through enforcing the Clean Water Act, the Porter-Cologne Water Quality Control Act (Water Code), and the Water Quality Control Plan for the North Coast Region (Basin Plan). Enforcement is conducted through individual case development for violations identified through routine inspections and reporting associated with permitted program sites and through warrant and consent inspections of sites that are not operating under requirements designed to address waste discharges associated with activities conducted on the sites. Enforcement also is addressed through collaboration with other local, state and federal agencies; one of the Cannabis Programs primary responsibilities is to, in collaboration with Department of Fish and Wildlife's (DFW) Watershed Enforcement Team (WET), pursue violations associated with cannabis cultivation activities. The Enforcement Program also supports and encourages development of Environmental Crimes Task Forces with local counties in the region, garnering a broad spectrum of public and local agency support and actively working to increase effectiveness through strategically working with a diverse group of regulatory bodies to reduce environmental crimes.

The Clean Water Act, Water Code and the Basin Plan prohibit the discharge of materials that adversely affect the beneficial uses of the waters of the State. The Regional Water Board has the authority to take enforcement action, ranging from a Notice of Violation to issuing administrative civil liabilities (monetary penalties) against persons who violate the Clean Water Act, Water Code, the Basin Plan regulatory requirements.

The overall objective is to protect, restore and preserve the quality of waters within the North Coast Region by applying enforcement strategies in a fair and equitable manner to address violations. The following types of violations are considered priorities in the North Coast: those affecting critical habitats, areas where restoration funds have been invested, federal Clean Water Act section 303(d) listed waterbodies, impacts to public drinking water, and the cumulative effects of violations.

Enforcement efforts are focused on activities associated with unregulated activities, cannabis sites, agriculture, storm water runoff, and regulated sites that are out of compliance with waste discharge requirements.

2.0 DIVISION RESOURCES

2.1 Staffing

The Compliance Assurance Unit is the one Unit dedicated to implement the regional Enforcement Program. Two Units implement the Cannabis Cultivation Waste Discharge Regulatory Program: (1) Cannabis Regulatory Unit 1, and (2) Cannabis Regulatory Unit 2. There is one dedicated Analyst for the Cannabis Program in the Administrative Unit. Consistent with all divisions in the office, the Division also receives support from the other five (5) staff in the Admin Support Unit.

Staff that utilize Enforcement and Cannabis resources are provided in the following table:

Table 1 – Division Staff, Includes Management and Support Staff

| <i>Position</i> | <i>Name</i> | <i>Division or Unit</i> | <i>PYs</i> |
|----------------------|-------------------|---------------------------------|--------------|
| Division Chief | Kason Grady | Cannabis & Compliance Assurance | 1.0 |
| Specialist | Stormer Feiler | Enforcement | 1.0 |
| Senior | David Kuszmar | Cannabis Regulatory 1 | 1.0 |
| Technical | 5 Staff | Cannabis Regulatory 1 | 5.0 |
| Senior | Mona Dougherty | Cannabis Regulatory 2 | 1.0 |
| Technical | 4 Staff | Cannabis Regulatory 2 | 3.6 |
| Senior | Diana Henriouille | Compliance Assurance | 1.0 |
| Technical | 5 Staff | Compliance Assurance | 5.0 |
| Admin Support Staff* | 6 Staff | Administration | 2.25 |
| Total: | | | 21.25 |

*1.25 PY of administrative support staff are included here to identify officewide analytical and administrative support but are not included below in Core Activities or Special Projects.

3.0 CANNABIS CULTIVATION REGULATORY PROGRAM

3.1 Core Activities and Projects by Priority

The primary responsibilities of program staff are categorized based on priority listed in Table 2. Most are described in more detail in Section 3.2.

Table 2 – FY 18/19 Cannabis Program Core Activities and Projects by Priority

| Priority Level | Activity/Project | Category | Deadline (FY 18/19 unless noted otherwise) |
|----------------|--|----------|--|
| 1 | a. Order Implementation: i. Process requests for enrollment and termination under the Regional and Statewide Cannabis General Orders including associated water quality certifications and other waste discharge programs associated with cannabis ii. Review technical documents for compliance and communicate with enrollees and their representatives iii. Inspect enrolled sites, assess compliance, issue inspection reports and enforcement actions when appropriate | Core | On-going |
| | b. Interagency Coordination: i. Meet with local and state agencies to collaborate ensure consistent regulation of enrolled sites, provide comments on projects pursuant to the CEQA, and prioritize enrollments and enforcement actions | Core | On-going |
| | ii. Review and comment on proposed updates to the Statewide Cannabis General Order and Policy | Core | 2 nd Quarter |
| | iii. Review and comment on the statewide Cannabis Cultivation Program Implementation Strategy | Core | 1 st Quarter |
| | iv. Coordinate with tribal governments throughout the region to provide direct outreach regarding proposed policy changes and to coordinate on applications for cannabis cultivation within 600 feet of tribal lands. | Core | Ongoing |
| | c. Education and Outreach | Core | On-going |
| | d. Participation on interagency enforcement inspections | Core | On-going |
| | e. Enforcement | Core | On-going |
| | f. Hiring: Fill the last two positions in this program, an Environmental Scientist and an Engineering Geologist | Core | 1 st Quarter |
| | g. Conduct a small organizational restructure to staff the Northern Field Office in Eureka, CA | Special | 1 st Quarter |
| 2 | a. Computer Vision Project: Develop technology to automatically identify cannabis cultivation sites using satellite imagery | Special | 4 th Quarter |
| | b. Collaborate with the State Water Board's Division of Water Quality on the implementation of contract to improve CIPS | Special | 3 rd Quarter FY 19/20 |

3.2 Core Activity and Project Descriptions

Activities and projects are listed below and identified by the priority (1, 2, 3, etc.) and the letter (a, b, c, etc.) listed in Table 2 above.

Priority 1.a – Order Implementation

Summary: Order Implementation includes processing requests for enrollment and termination under the Regional and Statewide Cannabis General Orders including associated water quality certifications and other waste discharge programs associated with cannabis, reviewing technical documents for compliance, communication with enrollees and their representatives, conducting compliance inspections, issue inspection reports and enforcement actions when appropriate, and all associated tasks.

Key Issues to Resolve:

- a. Need to finalize a Time Schedule Order to provide compliance deadline extensions and establish enforceable deadlines
- b. Develop tools to streamline inspections including an inspection report template, field inspection form, and electronic data collection platform using the Collector Application.

PY Allocation for FY 18/19: 6.0

| Milestones | Target Date (by FY Quarter) |
|---|--------------------------------|
| <i>Develop program templates to improve efficiency</i> | <i>FY 18-19/Q1</i> |
| <i>Work with the statewide Cannabis Roundtable to develop a Water Quality Certification application and standardized process.</i> | <i>FY 18-19/Q2</i> |
| <i>Work with the statewide Cannabis Roundtable to update the annual report requirements and process by making it all electronic.</i> | <i>FY 18-19/Q2</i> |
| <i>Finalize V1.0 Collector Application</i> | <i>FY 18-19/Q4</i> |
| <i>Work with existing enrollees in the North Coast Regional Order to transition to the Statewide Cannabis General Order or terminate their enrollment by June 30, 2019.</i> | <i>FY 18-19/Q4</i> |

Priority 1.b – Interagency Coordination

Summary: Staff works closely with the State Water Board and other regional boards to coordinate review and oversight of cannabis cultivation, comment on proposed legislation, and communicate regularly on issues with the potential to affect the program.

Key Issues to Resolve: Regulation of cultivation sites in counties with bans, caps on licenses, and other restrictions that could affect enrollment; commenting on local permits and development projects; coordination on the planning, scheduling, and conducting of enrollment inspections and enrollment enforcement efforts; assessment of water quality impacts of onstream pond development; and coordination with local agencies regarding other activities associated with cannabis cultivation including wastewater discharges to onsite wastewater treatment systems and to land.

PY Allocation for FY 18/19: 2.2

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| Milestones | Target Date (by FY Quarter) |
|---|--------------------------------|
| <i>Establish a formal process for coordination on permitting of cultivation sites, conducting enrollment enforcement of nonenrolled sites, and conducting site inspections with each County in the Region, CDFW, and CDFEA.</i> | <i>FY 18-19/Q3</i> |

Priority 1.c – Education and Outreach

Summary: Staff works with the public, local watershed groups, cannabis industry representatives, and local consulting firms to address concerns regarding water quality issues associated with cannabis cultivation. Staff also communicates with the regulated industry by speaking at conferences, town halls, and industry and community group meetings.

Key Issues to Resolve: Educate the general public and regulated community regarding regulatory requirements, the enrollment, transition and termination processes, and best practices for compliance.

PY Allocation for FY 18/19: 0.3

Priority 1.d – Participate on Interagency Enforcement Inspections

Summary: The Regional Water Board, in conjunction with the State Water Board Division of Water Rights and CDFW, identifies annual priority watersheds that reflect priorities for inspection based on water quality impairments and flow impacts, sensitive species and habitats, and density of known cultivation areas.

Key Issues to Resolve: Staffing inspections, messaging

PY Allocation for FY 18/19: 0.75

| Milestones | Target Date (by FY Quarter) |
|---|--------------------------------|
| <i>Participate in focused operations in Siskiyou and Trinity Counties</i> | <i>FY 18-19/Q1</i> |

Priority 1.e – Enforcement

Summary: Staff initiates enforcement actions in the form of Notices of Violation for corrective actions, Cleanup and Abatement Orders, or civil penalties for those activities that violate the Clean Water Act, the Water Code, Basin Plan, and cannabis regulatory orders or Waiver conditions and threaten to adversely affect water quality.

Key Issues to Resolve: Streamline issuance of enforcement actions and improve internal tracking and prioritization of cases.

PY Allocation for FY 18/19: 3.9

Priority 1.f – Hiring

Summary: Staff is in the final stages of filling all positions in the Cannabis Cultivation Regulatory Program.

Key Issues to Resolve: Fill the last two remaining vacancies in the Cannabis Regulatory Unit 2, an Environmental Scientist and Engineering Geologist.

PY Allocation for FY 18/19 Management Only

Priority 1.e – Organizational Restructure to Staff a Northern Field Office

Summary: The North Coast Region has been working with State Board staff for two years to identify and obtain a northern field office. The North Coast Region is a large region geographically and our current office is located at the most southern part of the region. Significant travel time from the home office to sites in the northern part of the region have consistently been identified as a limitation on our ability to efficiently serve our customers and stakeholders. In January of 2018, we were alerted to the possibility of obtaining five staff cubicles in a joint agency office in Eureka, CA. The other agencies located in this office would be directly involved in the new statewide regulation of the cannabis industry. The North Coast Region was recently informed that we had acquired the northern satellite/field office in Eureka, CA, with five available staff office spaces and, as a result, need to conduct a small organizational restructure within the Cannabis and Compliance Assurance Division to staff this new office.

Key Issues to Resolve: Staff relocations, identifying new geographic and programmatic responsibilities for the new Southern and Northern Cannabis Regulatory Units, and general organizational and operational changes expected with long distance management of a field office.

PY Allocation for FY 18/19: Management Only

Priority 2.a – Computer Vision Project

Summary: This project will develop technology to automatically identify cannabis cultivation sites using satellite imagery. Staff already have beta versions developed, but additional staff time is needed to integrate the tools with cannabis program business processes (e.g. enrollment enforcement).

Key Issues to Resolve: Need to develop a comprehensive watershed case study to act as a proof of concept for future efforts; insufficient computer processing power is a limitation on full implementation of this project, which will require procurement of IT enhancements; staff are currently using a trial Matlab license and procurement of a full license will be necessary for implementation of the Matlab version; unless the Water Boards establish an ongoing contract for access to high quality imagery, the access to imagery will remain a limitation for full deployment of this tool.

PY Allocation for FY 18/19: 0.2

Priority 2.b – Support Implementation of the CIPS Contract

Summary: The State Water Board contracted with Vestra Resources, Inc. in May 2018 to spend approximately \$500,000 to enhance and upgrade CIPS throughout the State. Regional Board staff will need to regularly collaborate with staff at the State Water Board to ensure that contract implementation meets the needs of the North Coast.

Key Issues to Resolve: Contract deadlines may result in acquisition of cultivation area polygons based on 2016 imagery without contract extensions; need to determine the degree of contract flexibility and opportunities for database integration, platform upgrades and acquisition of new imagery.

PY Allocation for FY 18/19: 0.2

3.3 Performance Targets

There are currently no Performance Targets for the Cannabis Cultivation Waste Discharge Regulatory Program. With the recent adoption of the Statewide Cannabis General Order and Policy, a statewide Roundtable has convened and begun discussions about the establishment of performance targets for this program statewide.

4.0 ENFORCEMENT

4.1 Core Activities and Projects by Priority

The primary responsibilities of the dedicated enforcement staff are categorized based on priority listed in Table 3. Most are described in more detail in Section 4.2.

Table 3 – FY 18/19 Program Core Activities and Projects by Priority

| Priority Level | Activity/Project | Category | Deadline (FY 18/19 unless noted otherwise) |
|----------------|---|----------|--|
| 1 | a. Mandatory Minimum Penalty Assessment | Core | On-going |
| | b. Discretionary Penalty Case Development, Prioritization, and Penalty Assessment | Core | On-going |
| | c. Conduct Enforcement Inspections and Investigations | Core | On-going |
| | d. Case Management of Complex, Long-Term Enforcement Cases | Core | On-going |
| | e. Development of Business Rules for Standardization of Enforcement Processes | Special | 1 st Quarter |
| | f. Development of a Tracking and Reporting Tools for Enforcement Cases | Special | 2 nd Quarter |

4.2 Core Activity and Project Descriptions

Activities and projects are listed below and identified by the priority (1, 2, 3, etc.) and the letter (a, b, c, etc.) listed in Table 3 above.

Priority 1.a – Mandatory Minimum Penalty Assessment

Summary: The Water Code mandates the assessment of mandatory minimum penalties for certain violations of effluent limitations in NPDES permits. As noted below, this core activity is associated with a long-standing, statewide performance target.

Key Issues to Resolve: Performance Target 2 (see below) was not met last fiscal year.

PY Allocation for FY 18/19: 0.9

Priority 1.b - Discretionary Penalty Case Development, Prioritization and Penalty Assessment

Summary: The development and prioritization of enforcement cases is a core function of the Compliance Assurance (Enforcement) Unit. Performance Target 1 as shown in section 4.3, below, requires that all Class 1 Priority Violations result in formal enforcement or an investigative order within 18 months of discovery. This requires case development, prioritization and penalty assessment. Additionally, the Board recently provided input regarding regional enforcement priorities, which need to be incorporated into the case prioritization process.

Key Issues to Resolve: Performance Target 1 (see below) was not met last fiscal year. Staff need to improve case tracking and reporting consistent with updated business rules that reflect regional enforcement priorities to ensure achievement of this Performance Target and regional priorities.

PY Allocation for FY 18/19: 0.6

Priority 1.c – Conduct Enforcement Inspections and Investigations

Summary: Conducting enforcement inspections and investigations is a core function of enforcement staff to develop quality enforcement cases and support other staff throughout the office to do the same.

Key Issues to Resolve: Improve the timeliness of inspection report development and issuance.

PY Allocation for FY 18/19: 0.25

Priority 1.d – Case Management of Complex, Long-Term Enforcement Cases

Summary: Once an investigative order has been issued or an enforcement action has been taken (e.g. Cleanup and Abatement Order, Cease and Desist Order, or penalty assessment with a Supplemental Environmental Project, Compliance Project, or Enhanced Compliance Action), the case requires significant amounts of staff time to ensure compliance or, if necessary, further enforcement. Following-up on enforcement actions was recently identified by the Board as an enforcement priority.

Key Issues to Resolve: Need to improve tracking of staff time for this activity.

PY Allocation for FY 18/19: 0.25

Priority 1.e – Development of Business Rules for Standardization of Enforcement Processes

Summary: Management is currently in the process of developing business rules to standardize enforcement processes to ensure fair and consistent enforcement throughout the region and the various programs in the office.

Key Issues to Resolve: Timeliness of case development and issuance of enforcement actions.

PY Allocation for FY 18/19: Management Only

Priority 1.f – Development of a Tracking and Reporting Tools for Enforcement Cases

Summary: Management is currently developing tools to track, and report back out to management on, the status of individual enforcement case development to ensure effective case prioritization consistent with the regional priorities and more timely enforcement action.

Key Issues to Resolve: Improvement in the current suite of tools available to management for internal tracking of enforcement case development could improve

PY Allocation for FY 18/19: Management Only

4.3 Performance Targets

Target 1: 100% of Class 1 Priority Violations will Result in Formal Enforcement or an Investigative Order Pursuant to Water Code Section 13267 within 18 Months of Discovery.

Target 2: 0 Facilities with Over \$12,000 in MMPs (4 or More Violations) Not Assessed within 18 Months of Accrual.