

LATE COMMENT



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Via Electronic Submittal

State Water Resources Control Board
Attn: Jeanine Townsend
1001 I Street, 24th Floor
Sacramento, CA 95814
Email: commentletters@waterboards.ca.gov

RE: Round Valley Indian Tribes' Comment Letter on Proposed Updates to Cannabis Policy, Staff Report, and Cannabis Cultivation General Order

Dear Ms. Townsend:

On behalf of the Round Valley Indian Tribes (RVIT or Tribes), we submit these comments on the State Water Resources Control Board's (SWRCB or Board) proposed updates to the Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation (Cannabis Policy), Cannabis Cultivation Policy Staff Report (Staff Report), and General Waste Discharge Requirements and Wavier of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis Cultivation General Order).

The RVIT Reservation is located in Mendocino County, within the Upper Eel River Basin. The Tribes have relied upon the water and fish of the Eel River to sustain their people and way of life since time immemorial. Moreover, the Tribes are a sovereign government that are responsible for the safety and well-being of their people. Cannabis cultivation poses a serious potential threat to the Eel River. These comments are limited to the sections of the proposed updates which would most directly affect the Tribes' water quality and supply. The Tribes' comments address the revised Cannabis Policy's Term 19 and 38 regarding the "Tribal Buffer." These comments also apply to the Staff Report and Cannabis Cultivation General Order to the extent those proposed updates are the same. The Tribes' specific comments on the proposed updates are set forth below.

1. Cannabis Policy: Attachment A, Section 1, Term 19 (“Tribal Buffer”)

Consultation Should Begin Within 14 Days of Receipt of the Application

The SWRCB should be required to initiate consultation with the Tribes within a set number of days after receiving an application for cultivation on or within the “Tribal Buffer.” This would ensure the Tribes’ voice is heard early in the application review process. For example, in the case of Assembly Bill 52, the permitting agency is required to begin consulting with tribes within fourteen (14) days of determination that a project application is complete. The Board should require a similar fourteen (14) day timeframe to begin consultation with the Tribes once an application for cultivation on or within the “Tribal Buffer” is received.

The 45-Day Review Period Should be Increased to 60 or 90 Days

Forty-five (45) days will not provide the Tribes with a sufficient amount of time to review a cannabis cultivator’s application materials and make an informed decision. The SWRCB should instead require 60 or 90 days as a more appropriate review period.

The 600-Foot Buffer Zone Should be Expanded

The Board should expand the “Tribal Buffer” zone to encompass a larger area, such as the Tribes’ ancestral territories. Alternatively, the SWCRB should consider expanding the “Tribal Buffer” zone upstream of tribal lands. Upstream cannabis cultivation and water diversions pose a serious threat of contaminating water that flows to the RVIT Reservation. To address this, the “Tribal Buffer” zone should be expanded to include those cannabis cultivation sites within 600 feet of a water body that flows downstream to Tribal lands.

Tribes Should Receive a Copy of the Permit Application

The Tribes should receive a copy of every permit application that could affect tribal lands to enable the Tribal Council to make an informed decision whether to approve or reject a request for authorization. Providing the Tribes copies of these permit application would allow the Tribes to assess the proposed cultivation operation, including its proposed location; its physical and ecological footprint; what other types of cannabis licenses, if any, its owners possess; and where the cannabis cultivator proposes to take and discharge water. All of this information is necessary for the RVIT to make an informed decision as to whether or not to authorize cultivation on or within the “Tribal Buffer.”

Tribes Should Always be Notified Unless They Have Explicitly Requested Not to Receive Notice

The Tribes should always be notified when SWCRB receives a completed application for cultivation of cannabis on or within 600 feet of tribal lands. Under the proposed rule, after a tribe notifies SWCRB that it will prohibit all cannabis cultivation on or within 600 feet of its lands, SWCRB will automatically reject future applications to cultivate on these spaces. However, even if the Tribes decide to ban cultivation within the Tribal Buffer, the Tribes still wish to receive notice that an application has been filed for cultivation on these lands. Such notice would enable the Tribes to make an informed decision at the time an application is filed as to whether it wishes to withdraw or modify its blanket rejection.

The SWRCB Should Coordinate with THPOs or other Tribal Representatives Regarding Potential Impacts on Tribal Cultural & Natural Resources

The Tribes are deeply concerned with protecting tribal cultural and natural resources, both within and outside the RVIT Reservation boundaries. The proposed updates should be revised to require the Board to coordinate with the Tribes' Tribal Historic Preservation Officer (THPO) or other appropriate Tribal Representative regarding how the proposed cultivation might impact the Tribes' cultural and natural resources.

2. Cannabis Policy: Attachment A, Section 1, Term 38 ("Tribal Buffer Exemption for Indoor")

Indoor Cannabis Cultivation Structures Should Not be Exempt from the Tribal Buffer Requirement

The proposed exemption for certain indoor cultivation is not acceptable to the Tribes. The exemption as proposed appears to apply only to cultivators that discharge their wastewater to a wastewater treatment system that accepts cannabis wastewater or discharge their wastewater directly to a storage tank (which must be outside of the Riparian Setback) and then properly dispose of it at a treatment facility. However, even with these protocols in place, there is still some risk of improper wastewater discharge. Moreover, the Tribes may have other reasons for wishing to prohibit cannabis cultivation -- indoor or outdoor -- on their lands. The Tribes suggest that Indoor Cannabis Cultivation Structures should not be exempt from the Cannabis Policy's requirement for tribal authorization on or within 600 feet of the "Tribal Buffer."

There Should be a Parallel Exception to the Riparian Setback Exemption if the Tribe Determines an Exemption Would Not Protect Water Quality

The proposed updates include an exception to the riparian setback exemption if the Regional Water Board's Executive Officer determines an exemption would not protect water quality. The SWCRB should add the following exception to the Tribal Buffer Exemption for indoor cultivators: "The tribal buffer exemption shall not apply if the Tribe's Tribal Council or other Authorized Representative determines that an exemption from the tribal buffers is not sufficiently protective of water quality."

At Minimum, Tribes Should Receive Notice of All Existing and Proposed Indoor Cannabis Cultivation Structures That Would Qualify Under the Exemption

At a minimum, the SWCRB should notify the Tribes of all cannabis cultivation, whether indoor or outdoor, on and within 600 feet of tribal land in order for the Tribe to effectively protect its water supply and natural resources. The Tribes are a sovereign government that are responsible for the safety and well-being of its people and must be informed of what is happening on tribal land. Finally, cannabis is still illegal under federal law. Therefore, the Tribes must be aware of all cannabis cultivation -- indoor or outdoor -- occurring on tribal land.

3. **Cannabis Cultivation General Order, Attachment A, Section 1, Term 19 (“Tribal Buffer:”) and Term 38 (“Tribal Buffer Exemption for Indoor”)**

See comments above on Cannabis Cultivation Policy.

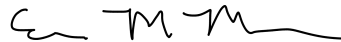
4. **Staff Report (“Riparian Setback and Tribal Buffer Exemptions” at pg. 37-38)**

See comments above on Cannabis Cultivation Policy.

The Round Valley Indian Tribes appreciate the opportunity to comment on the Board’s proposed updates to the Cannabis Policy, Staff Report, Cannabis Cultivation General Order, and look forward to discussing these issues in the future with the Board.

Very truly yours,

BERKEY WILLIAMS LLP



By: Erica McMilin
Attorney for the Round Valley Indian Tribes