



via email

September 6, 2017



State Water Resources Control Board
Clerk to the Board
Attn: Jeanine Townsend
P.O. Box 100
Sacramento, CA 95812-0100
commentletters@waterboards.ca.gov

RE: Comment Letter – Cannabis Policy, Staff Report, and General Order

Dear State Water Resources Control Board Staff:

These comments are submitted on behalf of the Center for Biological Diversity in response to the State Water Resources Control Board’s (“State Water Board”) Cannabis Cultivation Policy-Principles and Guidelines for Cannabis Cultivation (“Cannabis Policy”), Cannabis Cultivation Policy Staff Report (“Staff Report”), General Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation (“General Order”), and Requirements for Cannabis Cultivation (“Cultivation Requirements”) included as Attachment A to the Cannabis Policy and General Order.

The Center for Biological Diversity (“Center”) supports the successful implementation of the Medical Cannabis Regulation and Safety Act and Proposition 64 (the Adult Use of Marijuana Act). Recognizing that other states will look to California to pave the way in marijuana legalization, this task, properly undertaken, is as complex as it is important. The goal is substantial—to bring a major industry out of the shadows into the scope of modern environmental practice, to address past damage, and to ensure that poor practices are not incorporated into the large and growing legal cannabis industry. The State Water Board must also assure that the environmental safeguards that the legislature and the voters put into effect with the legalization of recreational marijuana are adhered to in this rapidly expanding industry.

The Center is a non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.5 million members and supporters throughout the United States, including California, and has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in this state.

1. The State Water Board Should Require Greater Clarity and Regulation of Road Building in Riparian Areas

The Center appreciates the State Water Board's regulations to minimize impacts and attempts to minimize impacts to riparian areas and water bodies. The Center encourages the State Water Board to assure that the impacts associated with road building for new cannabis cultivation activities are properly addressed and mitigated. The Staff Report recognizes that stream crossing installation and maintenance associated with roads connected to cannabis cultivation could have negative impacts on the environment. (Staff Report at 28, 37). There are some ways the Cultivation Requirements could be improved to provide better clarity, guidance, and regulatory oversight for road building and maintenance activities.

Any building, disturbance, land clearing, or operations of vehicles associated with road building and cannabis cultivations must be treated as land disturbance in riparian setbacks and should not be excluded from prohibitions or mitigations in the Cultivation Requirements. Prohibitions on the removal of trees and vegetation associated with road building and cannabis cultivation, including activities within 150 feet of fish bearing water bodies or 100 feet of aquatic habitat for non-fish aquatic species, should be explicit.

The Cannabis Policy, General Order, and Cultivation Requirements should avoid any ambiguity and require a Lake and Streambed Alteration Agreement from the California Department of Fish and Wildlife for all stream crossings and be clear that roads constructed for cannabis cultivation activities are not covered by the Clean Water Act Section 404(f) exemption for road and forest roads. Cannabis cultivation is not a federally recognized legal activity and is thus, not subject to Clean Water Act exemptions. The State Water Board should also avoid self-certification for exemption from Clean Water Act Section 404/401 or Lake and Streambed Alteration Agreements in order to assure no adverse effects on riparian areas or sensitive wildlife occur.

Designs of creek crossings should be reviewed by State Water Board or Regional Water Quality Control Board staff. The proper design of a stable culvert that will not trigger headcuts or scour pools requires the expertise of an experienced fluvial geomorphologist and the Cultivation Requirements should require that culvert designs be prepared by experienced fluvial geomorphologists.

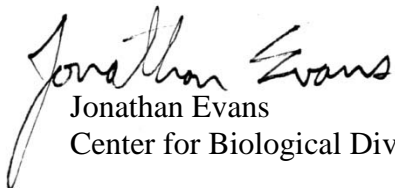
The Cultivation Requirements would benefit from greater clarity and be easier to comply with if language regarding "activities in surface waters" were revised to include examples of activities in surface waters that will require water quality certification such as road crossings, creating culverts at stream crossings, bents for bridges that are located within the stream channel, or diversion structures. This term "activities in surface waters" should also be improved by stating that activities requiring water quality certification should require conformance with the California Environmental Quality Act.

2. The State Water Board Should Require Greater Clarity Regarding Disturbance in Riparian Areas

The Cultivation Requirements require cannabis cultivators to maintain existing, naturally occurring, riparian vegetative cover in aquatic habitat areas “to the maximum extent possible.” The term “to the maximum extent possible” does not sufficiently constrain impacts to riparian vegetation and should be revised to limit the percentage of on-site riparian vegetation that may be impacted for a cultivation project and to require appropriate mitigation for impacts to riparian vegetation.

Thank you for your help make sure that California’s expanding cannabis industry doesn’t come at the expense of our water resources.

Sincerely,


Jonathan Evans
Center for Biological Diversity