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September 6, 2017



State Water Resources Control Board
Attn: Jeanine Townsend
1001 I Street, 24th Floor
Sacramento, CA 95814

RE: Comment Letter: Cannabis Cultivation Policy and General Order

Dear State Water Resources Control Board,

Thank you for the opportunity to comment on the draft Cannabis Cultivation Policy and General Order. I appreciate the tremendous amount of work that has gone into this endeavor but I am very concerned that in numerous instances the proposed regulations, while intended to protect the environment, may have the opposite effect. The proposed regulations fail to strike a balance between the ideal regulation that might be applied to a new impact, and the present reality of an industry that developed outside of any comprehensive regulatory system and currently exists full-blown across the landscape. The environment will be best protected by bringing a substantial number of existing cannabis cultivators into a regulated system – not by devising a program that is so expensive and difficult to comply with that it guarantees the continued existence of a robust and completely unregulated black market.

I am very concerned that cultivators who have enrolled with the North Coast Regional Water Quality Control Board, and who have worked diligently to fully comply with all requirements, may now come under the authority of the statewide General Order which sets different standards and does not appear to contain any allowance for compliance efforts made to date. In some cases cultivators have made significant infrastructure improvements and may now have to make additional investments to redo key infrastructure. Any cultivator currently enrolled with the North Coast Regional Water Quality Control Board must be allowed the option to continue to work with the Regional Board or at least have their property plans “grandfathered in” and deemed to be in compliance.

A predominant theme of the proposed regulations is an all-encompassing and one size fits all approach that effectively supersedes and goes far beyond any regulations currently applied to conventional agriculture or any other land use activity. This is particularly evident with regard to water rights in general and surface water forbearance in particular. It appears that holders of existing water rights, wells and ponds may continue to rely on those water resources for every established use but not for the continued irrigation of cannabis during prescribed months without any showing that such use has a negative impact on water resources or the environment. If a water resource may be legally utilized to support a vineyard, orchard or vegetable garden, it ought to be available for any other legal use, including cannabis cultivation.

The minimum setbacks from riparian zones fail to take into account any site specific conditions or erosion control measures that may be effectively utilized. There are innumerable instances where agricultural operations exist adjacent to conventional agriculture without any documented significant environmental

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impact. If the proposed setbacks were to be applied to conventional agriculture, many thousands of acres now devoted to production of food and fiber would no longer be available for ag production.

The proposed regulations mandate duplicative and unnecessary actions. For example, instead of requiring cultivators to apply for and obtain a Lake and Streambed Alteration Agreement (LSA Agreement) from the California Department of Fish and Wildlife (CDFW) if applicable, every cultivator is mandated “to consult with CDFW to determine if a [LSA Agreement] is needed....” However, it is my understanding that CDFW has no mechanism for such a consultation. As a result, it is my understanding that CDFW requires any cultivator seeking to comply with the required mandate to apply for a LSA Agreement whether one is needed or not. This results in unnecessary consumption of time and expense for both the cultivator and the agencies.

The definition of Land Disturbance (which includes cultivation areas) is so broad that a cultivator could be required to comply with the requirement to record weather forecasts and employ erosion control measures as mandated simply to conduct ongoing cultivation activities. This may not be the intent, but the regulations are so broadly written that they lend themselves to onerous interpretations at every turn.

Likewise, as written, the regulations require a records search for any potential Native American archeological or cultural resources prior to any land disturbance activities for “new or expanded cannabis activities.” As written, it makes no difference if the site is already utilized for any other agricultural activity.

An additional example of the pervasive overreach of the proposed regulations is the prohibition on synthetic netting materials “to minimize the risk of ensnaring and strangling wildlife.” The goal is laudable, but the regulation is proposed in the apparent absence of any evidence that it is necessary. It is also more than slightly ironic that numerous state agencies and their contractors and grantees, most likely including the State Water Resources Control Board, utilize synthetic netting materials.

In conclusion, the proposed regulations need to be completely revamped. Creating a perfect regulatory system, at least on paper, will do little to protect the environment if only a tiny percentage of current cultivators are able to comply.

Sincerely,



John McCowen
Mendocino County Second District Supervisor