



**Comment to the State Water Resources Control Board
DRAFT Cannabis Cultivation Policy dated July 7, 2017**

I am a retired lawyer helping some friends who are trying to establish a medical cannabis distributorship that intends to become licensed next year when the licenses become available. I have experience in both the public and private sectors. Although I'd like to see the start-up business succeed, I am not a cannabis cultivator, and have no ax to grind one way or the other. I am driven by fact and science.

Please do not lose sight, as you read this comment, of the fact that I find the goals of the Policy to be appropriate, needed, and attainable.

To summarize what follows, I think the Water Resources Control Board DRAFT Cannabis Cultivation Policy dated July 7, 2017 (the "Policy") is overburdensome, unfair, absurd (in the sense of Camus or Ionesco), and will prove to significantly keep cultivators in the black market. It stems from ignorance and, I think, a latent dislike and contempt for the cannabis farmer. It is a document of revenge. *Its laudable goals are attainable*, but if the Policy is implemented and enforced as written, the black market will continue to dominate the cannabis market for years, and the environmental goals of the Policy will be unrealized.

When I first read the Water Resources Control Board DRAFT Cannabis Cultivation Policy dated July 7, 2017 (the "Policy"), I thought of comments, criticisms, that could be made to many - most - of the provisions. I re-read it and thought about what the drafters were trying to accomplish, and realized the problem with the Policy will not be resolved by nit-picking its provisions. The problem with the Policy is political and to some extent philosophical. Unless this attitudinal problem is seriously addressed, little progress will be made in the legalization of cannabis in California.

One would think that of all the states in the union, California would be the most advanced, progressive, if you will, in its thinking about cannabis. One would think that policy would be driven by science, as well as a desire to replace the black market which includes many tax evaders with a legal market that benefits the state with significantly increased revenue. The Policy *is* driven by science, but in a perverse way. It is a textbook case of bureaucratic boondoggle, of biting off one's nose to spite one's face.

1. The science tells us that while cannabis is not without potential problems, it is much less deleterious than alcohol. The societal harm caused by alcohol over the past 150 (or 50, or 5) years is far greater than that caused by cannabis. It is both a more damaging substance than cannabis and a more abused substance. If any of you reading this do not believe this, please read the report on cannabis put out in January of this year by the National Institutes of Health, Engineering, and Medicine, as well as the *Wilson Quarterly* article about drug policy published in the mid 1990s (I'm not sure of the exact date, and my library is packed up), wherein cannabis was specifically found to be less than half as harmful as alcohol. The science and the facts indicate that cannabis should be less stringently regulated than alcohol. The state is doing the opposite. Shame on you.

2. What other industry is as strictly regulated as the proposed regulations of all kinds planned to

govern the cannabis industry? I believe the answer is none, but if there is another, prove it.

3. The state still classifies cannabis as a hallucinogen. Hallucinogen is defined as a substance that causes hallucinations, that is, a person who is hallucinating perceives sensory inputs that a normal person sitting right next to him would not perceive because they do not really exist. That is not what cannabis does. It is not a bona fide hallucinogen, like peyote or psilocybin or LSD. While it does enhance certain senses, makes one's perceptions of color or music more acute, it does not make the user perceive things that do not exist. Step one is to correct this and other errors that are based on myth rather than science.

4. My overriding concern about the Policy is that it treats water as the center of the universe, and demands that cannabis farmers subordinate everything to the concerns of water and related environmental issues. Water *is* important, and is becoming more so due to changing weather patterns and increasing pollution. Environmental harm is likely to get worse under the present administration in Washington. But the controls placed on cannabis farmers regarding water should be similar to those placed on other agricultural enterprises. That a particular region, such as Humboldt County (where most of California's cannabis growers are located, I believe), because of its topography and rainfall pattern and history as a former extensive salmonid spawning ground, requires some more stringent controls is perfectly understandable. But to move from practical tolerance of the black market growers for decades - tolerance based on economic necessity - to a rigid and, to not put too fine spin on it, ridiculous level of control is not only unnecessary, but unfair and self-defeating.

If every cultivator were to abruptly transform from the unregulated black marketeer of 2017 to the regulated, compliant cultivator of 2018 envisioned by the Policy, it would truly be a boon to the environment (as well as the State's treasury). But that will not happen. I estimate that the cost of compliance to a typical cultivator dealing with typical legacy issues, ones often not created by the current cultivator but pre-existing when he bought his property, as well as dealing with his own current practices would exceed \$100,000, and in many cases exceed \$200,000. And this when the revenue from cannabis farming is about one third of what it was just a few years ago. Just the reports required would bury most cultivators in red tape and formalistic duties considerably beyond their abilities. And requiring certain professionals to prepare the reports is also a guarantee of noncompliance. I suspect that there are not enough qualified professionals in the state to timely prepare all of the reports the Policy demands. Professionals I have spoken with agree.

The unfairness stems from requiring cannabis cultivators to do more than any other agriculturalist in the state, and particularly the approach to legacy issues that the farmer often did not create. Indeed, the logging and fishing industries historically have done far more damage than the cannabis cultivators, and although they essentially destroyed their businesses by years of overharvesting, the mess they left behind should not fall on the cannabis cultivators, at least not as something that must be corrected *immediately*. Without the grace of time, few cultivators are going to be willing to try to go legal. I am aware that the Policy gives the state the right (but not a duty) to extend compliance times, but few will roll the dice on what a government might do, especially one that produced such an unaware and oppressive document.

The concerns expressed in the Policy are legitimate, and should be addressed. But unless they are handled a lot more sensitively, few cultivators will transition into the legal market. Historically, eradications have run at about 1% or less of the active growers. The growers all know this; they are comfortable with the risks. Even if the eradication rate is doubled, something unlikely due to the lack of money, there is still only about a one in fifty chance that any cultivator will be hit.

This combination of unfairness and lack of necessity will keep most cultivators in the black market. The anticipated tax revenues will not occur, the cost of eradications will have to dramatically increase if that path is used to force compliance. This is known as killing the goose that lays the golden eggs.

5. The effect of the Policy, I fear, will be to force most cultivators to remain in the black market, with the result that the legacy and current issues concerning water and the environment as identified in the Policy will largely remain unchanged. It should, I think, create a path that will realistically induce cultivators into the legal market. Moreover, an undesired consequence of the Policy will be to reduce the tax revenue anticipated from cannabis activities.

To attract cultivators away from the market that they know well and are comfortable with, and yet to accomplish the laudable goals of the Policy will require much greater awareness of reality. As I read the Policy, and then re-read it, the word that kept arising in my mind was “surreal.” The effort seems to be to lay on the cannabis cultivators the task of cleaning up much of the waters of the State, even though many causes other than cannabis farming have placed them in the perilous condition that the drafters of the Policy perceive them to be in. Moreover, the heady days of Lewis and Clark plucking giant salmon from the teeming waters of the Columbia River are forever gone. Even the days of sustainable fishing the more modest rivers like the Eel and the Mad are gone. Our government, the same one that is now valuing impossibly pristine watersheds and trying to make cannabis cultivators restore the State’s watershed to some ideal condition in complete ignorance of reality, was what allowed the watersheds to deteriorate to their present conditions. And it was overlogging and overfishing, as well as poor agricultural practices, and governmental indulgence in those activities, as much as cannabis farmers, that has put us where we are today.

6. What should be done? The problems have been 150 or more years in the making, and the biggest contributors to it are no longer around. The state should contribute to the remediation of legacy issues (say 50 - 50 with the farmers), and allow a lot more time to mitigate them. The urgency underlying the Policy is phony. The real environmental issues today arise from a group of predatory and irresponsible men now in charge of the federal government, and from the global warming and environmental degradation that flow from the petroleum and coal extraction, transportation, and burning activities. The profoundly ignorant yet determined effort to do away with sensible environmental regulation in the name of providing “jobs” and “making America great again” show that a frenetic effort to clean up the State’s watershed is, well, silly (that is, the frenetic tone is silly). The goal can and should be reached, but in a more measured and reasonable manner, one that includes money and effort by not only the cannabis cultivators, but from government as well. It would be a good use for some of that excise tax revenue.

The people of California must acknowledge reality and history and participate in the remediation efforts envisioned by the Policy. Anything less is fundamentally unfair and perverse.

The Policy as written is a fine example of the old proverb, “guilt, the gift that keeps on giving.” That cannabis cultivation and the black market supporting it has kept Humboldt County, and perhaps others to a lesser extent, in the black for many years is an embarrassment to many, and many feel guilty over that, as well as over the foolish laws governing cannabis. These conflicting attitudes underlie the Policy, which rhetorically is easy to defend, but practically impossible to defend. Start with the science; ignore the politics. Treat cannabis less stringently than alcohol as demanded by the science. Deal with the important environmental issues in a manner designed to lead to success, not failure. Give more time, allow problems that have existed for decades to continue a little longer so long as they are on track to be remedied within, say, five years. Create a welcoming and realistically doable regulatory space and you will find the state will fare much better than it will if the Policy as drafted becomes law.

Sincerely,

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