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CALIFORNIA

September 6, 2017

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

RE: Cannabis Policy and General Order

Dear Ms. Townsend:
Thank you for giving Sierra Club California an opportunity to comment on the State Water Resources Control Board (SWRCB) proposed Policy and General Order governing regulated cannabis cultivation. The calamitous environmental impacts of illegal cannabis cultivation on both public and private lands have been of great concern to us for a number of years, and it was heartening to see that these unacceptable effects are explicitly recognized by SWRCB in the Findings supporting the General Order.

We would like to express several general concerns and one very strong recommendation for a policy change.

California Environmental Quality Act (CEQA) review. The Policy states that it "meets the requirements of Water Code section 13149(b)(1) and is categorically exempt" from CEQA review, but the relevant code section contains language excluding "construction activities and relaxation of standards allowing environmental degradation" from this exemption.

CEQA compliance is not addressed anywhere else in the Policy and Guidelines, which should be revised to state that actions with potential impacts to waters of the State and/or federal or state listed species will require CEQA review before they can be implemented. We recommend that SWRCB follow the example of the California Department of Food and Agriculture (CDFA) which conducted a full Programatic Environmental Impact Report on its proposed cannabis cultivation regulations, regulations that in many respects parallel those provided by SWRCB in these documents.

Access roads. The definition of land disturbance includes "all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or *access,*" but it is not always clear whether land disturbance for road construction is counted in the acreage totals for Total Disturbed Area. Specifically, the Policy exempts roads covered by Clean Water Act (CWA) permits from consideration as disturbed land in riparian setbacks. No rationale for this exclusion is provided, and we recommend that it be eliminated.

When access roads cross or approach riparian areas those sites should be considered high risk, and the relevant Policy and General Order sections revised accordingly. Land disturbed for access roads should also be included in assessing the Total Disturbed Area, and the appropriate regulatory tier determined accordingly.

Special status species. Although the take of species listed under the federal and State Endangered Species Acts is not authorized by the policy, the procedures for consultation with responsible agencies are not clearly laid out.

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A project that would not impact wetlands or other waters of the United States would not require a CWA 404 permit, leaving preparation of a Habitat Conservation Plan as the only consultation option for federally listed species. A requirement to engage in this very expensive option might act to discourage compliance, and without it the responsible agencies will have no avenue of engagement. Instead, the Policy and General Order should explicitly establish methods to prevent take of listed species and establish a consultation mechanism for any projects possibly impacting them.

Tribal lands. Both the General Order and the Policy make repeated use of the phrase "Indian country" in referencing tribal lands. Not only does this expression lack legal precision, it is sometimes considered pejorative. Alternative wording is needed.

A strong policy recommendation on degree of slope and other erosion determinants. Both the Policy and General Order establish a maximum slope of 30 percent as the threshold between some Low and Moderate Risk projects, and allow a slope of up to 50 percent as the lower limit of High Risk. We contend that these standards are not nearly restrictive enough to protect surface waters from undue erosion risk, whether or not riparian setbacks are maintained. Instead, we suggest a maximum of 15 percent as the determinant for a Low Risk site, and 30 percent for Moderate risk. Neither cultivation nor road construction should be allowed at all on slopes greater than 45 percent. We also suggest that soil types, which vary a great deal in their stability and ability to hold water, be taken into consideration in determining risk categories.

An egregious error. For the most part these documents appear to be accurate and carefully composed, but both (p. 21) refer to a nonexistent organization called the "California Exotic Pest Plant Council" in place of the highly respected California Invasive Plant Council.

Thank you for your consideration.

Sincerely,

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