

Cannabis Regulation and Enforcement Efforts

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Brief Program Background

- May 2013, Butte County Requested Assistance
- Summer 2013, Legislators & Governor's Office
- Fall 2013, Formed Working Group
- November 2013, Joint BCP for Positions
- Governor's Budget Allocated
 - 11 Water Board Positions
 - 7 CDFW Positions
- Technology Development (CIPS)
- Comprehensive Strategy
- Cannabis Pilot Program Initiated
 - Central Valley Water Board
 - Department of Fish and Wildlife Region 1
 - North Coast Water Board

Boundaries



THE PROBLEM

- Illegal Water Diversions
- Illicit Grading Activity
- Chemical Usage
- Domestic Wastes
- Threats to Wildlife
- Timber Conversion
- Public Safety



Central Valley Water Board's General Order

- The General Order regulates the discharge of wastes from outdoor or mixed indoor/outdoor cannabis cultivation operations that occupy and/or disturb more than 1,000 square feet.
- The General Order does not authorize, endorse, sanction, permit, or approve the cultivation, use, or sale of cannabis.
- Provides primacy to local jurisdictions

General Order (Cont.)

- Uses Discharge Prohibitions, Discharge Specifications, and Best Management Practices to Reduce and Eliminate Waste Discharges from Medicinal Cannabis Cultivation Activities
 - Discharge Prohibition: Hazardous Waste
 - Discharge Specification: 100' from surface water
 - Best Management Practices (BMPs) Manual: Erosion and Sediment Control Measures

Tiers

***De minimus*: < 1,000 square feet**

Tier I (Low Threat): <30% Slopes, <1/4 Acre,
AND >200 feet from aquatic life bearing water body

Tier II (Moderate Threat): <30% Slopes, < 1 Acre, AND
>200 feet from aquatic life bearing water body

Tier III (Elevated Threat): >30% Slopes, > 1 Acre,
OR <200 feet from aquatic life bearing water body

CEQA Compliance

- Timberland Conversion Permit from CALFIRE
- Local Permits (Grading, Building, Cultivation)
- Biological Site Assessment prepared by a qualified wildlife biologist
- Cultural Resources Inventory prepared by a qualified cultural resources professional
- Site Management Plan
- Potential need for other Water Quality Permits from Army Corps / CDFW / Water Board

Notice of Intent (NOI) & Notice of Applicability (NOA)

- Cultivator's/Landowner's Name, Phone Number, Address, and the Assessor's Parcel Number
- Tier
- New or Existing Grow (As of October 2nd, 2015)
- CEQA Compliance
- Annual Fee based on Tier/Threat to Water Quality
- Notice of Applicability
- All NOIs and NOAs are “public information” subject to Public Records Act

Tier 1 Operation



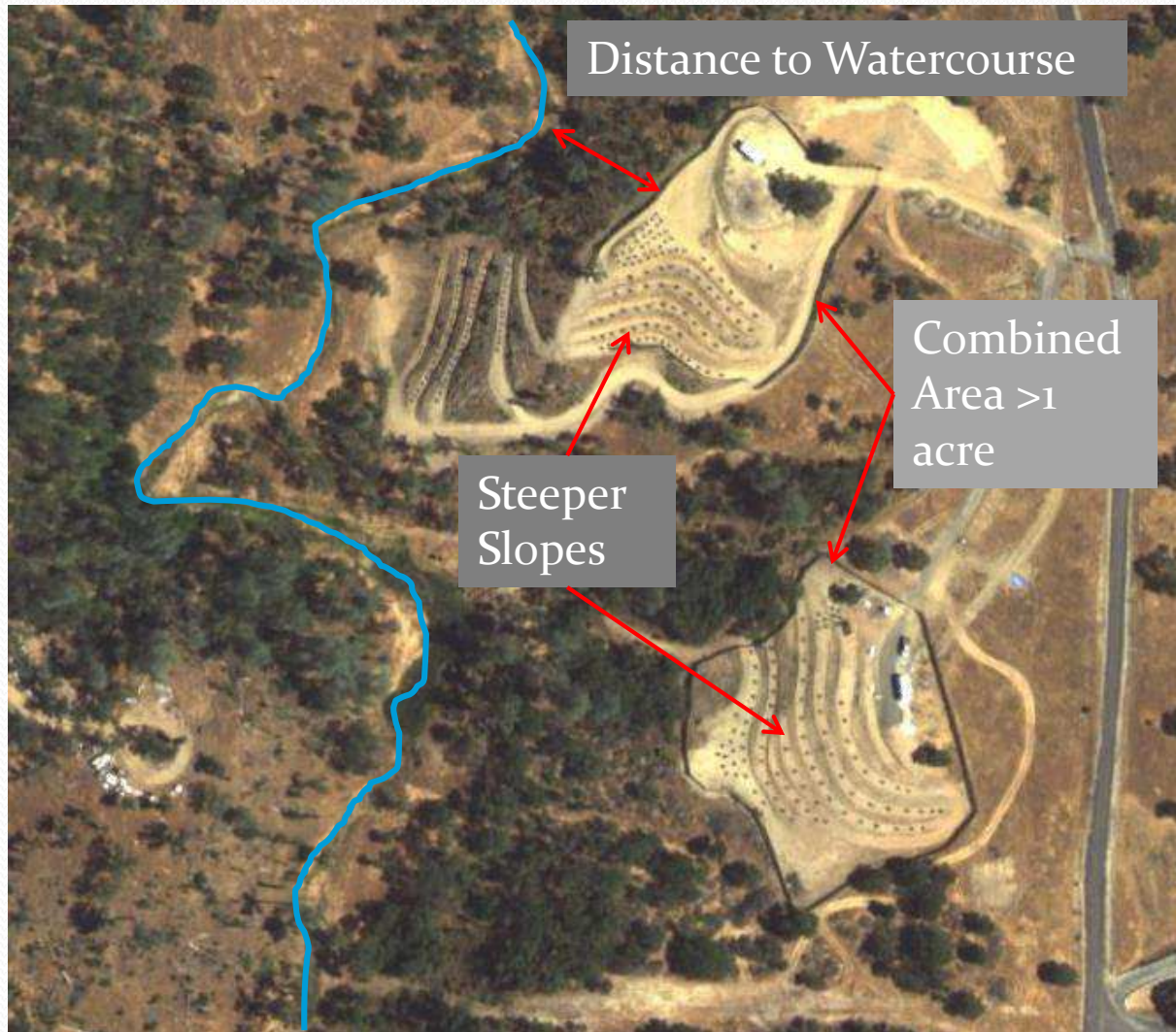
< 1/4 acre

Gentle Slopes

Tier 2 Operation

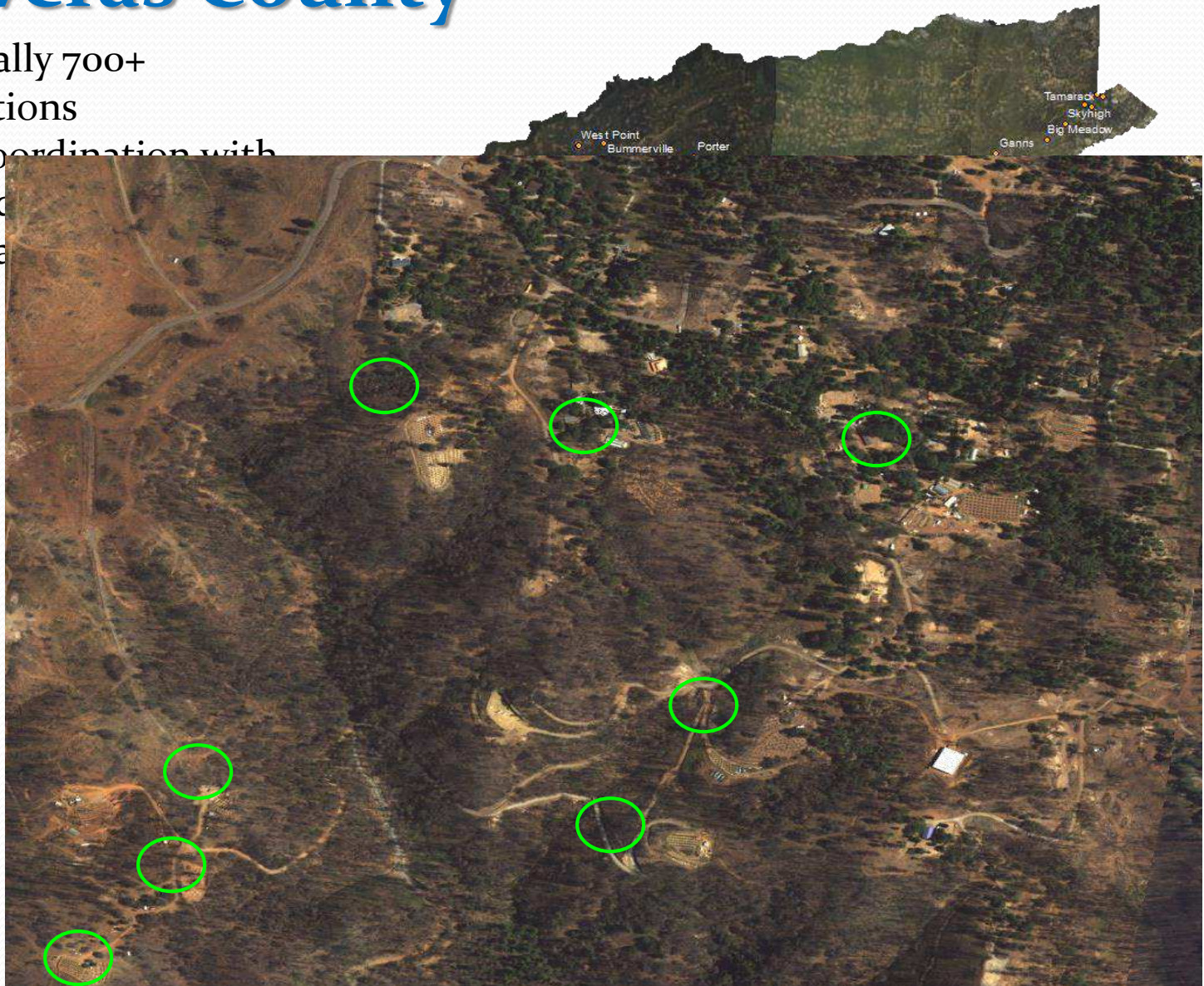


Tier 3 Operation



Calaveras County

- Potentially 700+ applications
- Close coordination with county officials
- Compliance with local regulations



Recent Legislation

- SB 837
 - Amended and combined AB 243, AB 266, and SB 643
- Department of Consumer Affairs
 - Bureau of Medical Cannabis Regulation (BMCR)
- California Department of Public Health
 - Office of Medical Cannabis Safety (OMCS)
- California Department of Food and Agriculture
 - Medical Cannabis Cultivation Program (MCCP)
- Creating large scale regulation and oversight in coordination with local ordinance

Cannabis Identification and Prioritization System (CIPS)

Statewide Summary

QUICK STATS

Evaluated Area:

- 10** Interpretation Areas
- 164** HUC-12 Watersheds
- 34** Total Acreage

Grow Summary:

- 19,050** Number of Grows Identified
- 3,910** Grow Site Parcels
- 1,704** Total Grow Acreage

OF GROWS BY TYPE

Outdoor vs Greenhouse

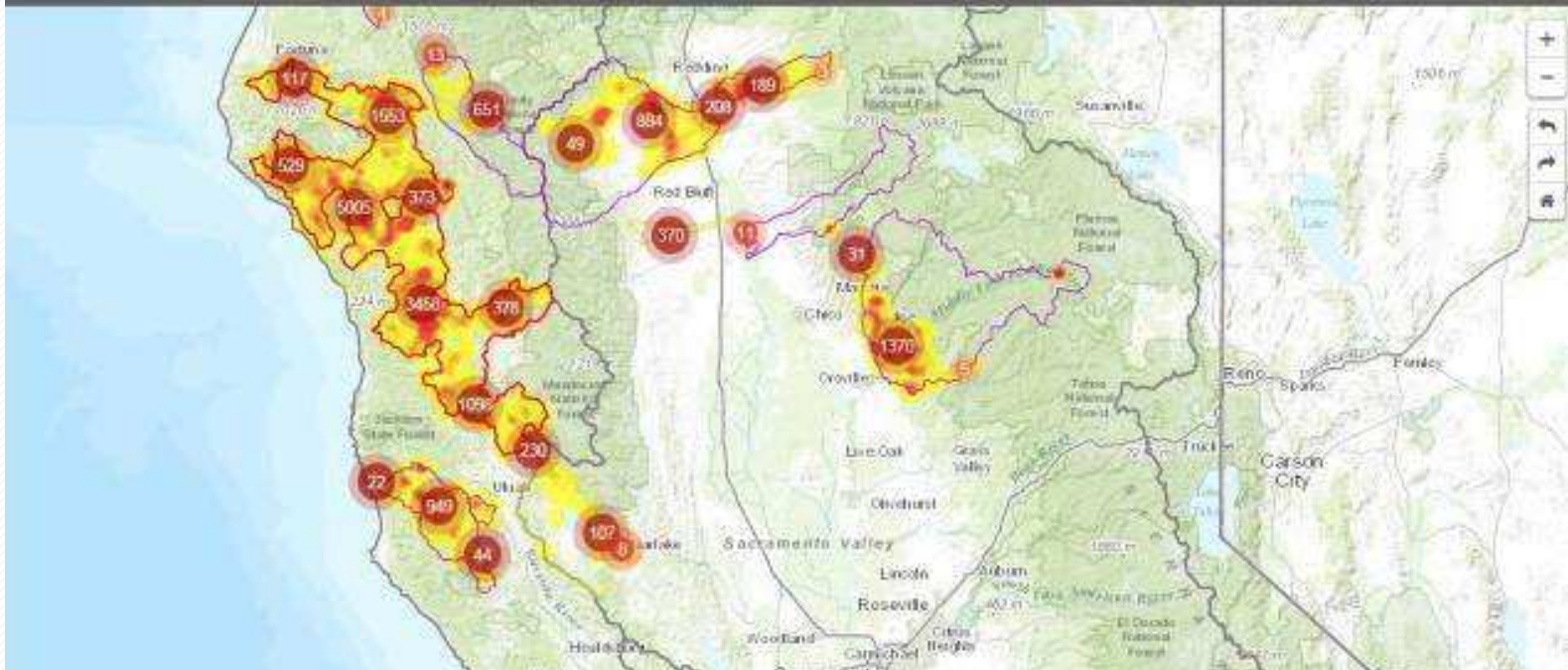


PRIORITIZATION MODELING

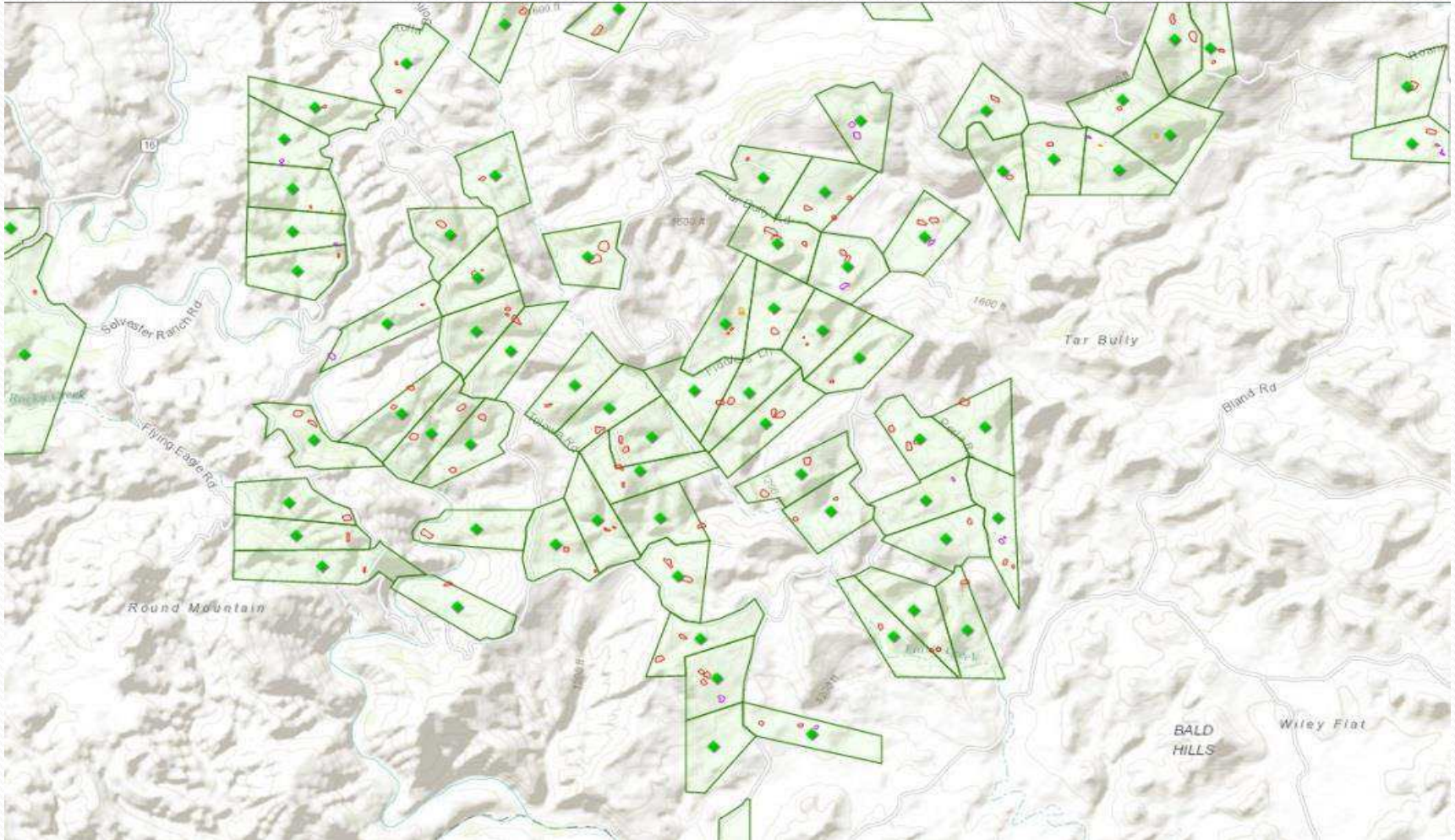
Cultivated Area



Map Search Layers Basemap Analysis Map Tools View Prioritization Model



Notable Features



State Water Resources Control Board Implementation of Senate Bill (SB) 837

Cannabis Interim Principles and Guidelines



Division of Water Rights
State Water Resources Control Board
August – October 2016

State Water Board Responsibilities

- Ensure individual and cumulative effects of water diversion and discharge associated with cannabis cultivation do not affect instream flows needed for fish spawning, migration, and rearing, and flows needed to maintain natural flow variability



Principles and Guidelines

- Developed by State Water Board in consultation with California Department of Fish and Wildlife
- For diversion and use of water for cannabis cultivation in areas where cultivation may have potential to substantially affect instream flows



Principles and Guidelines (cont.)

- Principles and guidelines shall include measures to protect springs, wetlands, and aquatic habitat from negative impacts of cannabis cultivation
- May include requirements that apply to groundwater extractions



Registrations

- Develop general terms and conditions for the Small Irrigation Use registration program that can be applied statewide to support cannabis cultivation



Water Rights 101

- Riparian water right
 - Right to use the natural flow of water on riparian land. Riparian land is land that touches a lake, river, stream, or creek.
 - Submit an initial Statement of Water Diversion and Use between January 1 and July 1, following the year of first use
- Appropriative water right
 - Use of water on non-riparian land or seasonal storage of water
 - Permits, licenses, small domestic registrations, small irrigation and use registrations, or livestock stockpond use registrations
 - Submit application/registration form for approval prior to constructing project and diverting water

Implementation and Enforcement

- Goal: Develop interim principles and guidelines that are easily understood and enforceable
- State Water Board has primary enforcement responsibility for any principles and guidelines implemented as a result of SB 837 (Water Code, §13149(b)(5))
 - Must notify the CDFG of any enforcement action taken
- SB 837 does not limit the regulatory authority of the State Water Board under other provisions of law (Business and Professions Code, §19315 (c))

Interim Principles and Guidelines - Concept

- Surface water diversion forbearance period
 - Dry period
 - period will vary by location depending on climate and hydrology
- Flow requirements for diversion period
 - Wet season
 - Maintain first flush flows
 - Maintain spring recession flows
 - Maintain portions of other high flow events

Interim Principles and Guidelines - Concept

- Additional principles and guidelines
 - Dry season flow requirements for hydrologically connected groundwater diversions
 - Fish screens for diversions
 - Riparian buffers
 - Removal of fish passage barriers
 - Off-stream storage requirements
 - Secondary containment for bladders

Projected Timeline

- Conduct initial outreach meetings in key regions: August - October 2016
 - October 4th meeting in Rancho Cordova from 2-4 pm will be webcast
- Release policy, with principles and guidelines, for public review (60 days): March- May 2017
- State Water Board meeting for consideration of proposed principles and guidelines: August 2017

Public Participation

- How can you participate?
 - Participate in outreach meetings and workshops
 - Submit written comments (tell us what you like and recommendations)
 - Deadline to submit comments is **October 7, 2016**
 - Email: cannabisWR@waterboards.ca.gov
 - Written Correspondence:

State Water Resources Control Board
Division of Water Rights
Cannabis Interim Flow Unit
P.O. Box 2000
Sacramento, CA 95812-2000
 - Submit comments on Draft Interim Principles and Guidelines
 - Attend State Water Board meeting, and provide comments
 - Projected to be held in August 2017

Additional Information

- Check out our website at: waterboards.ca.gov/cannabis
- Sign up for our email list to receive additional information about the State Water Board's efforts related to commercial cannabis cultivation.
 - Go to:
http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml
 - Enter email address and name at the top of page
 - Select "Water Rights"
 - Check the "Cannabis Cultivators" box
 - Click "Submit"

Enforcement Perspective: Authority, Past Successes & Next Steps



Water Board Photo ©

Multiple Agency Task Force
Formed in 2014

- Water Boards' Cannabis Cultivation Enforcement and Regulation Unit
- California Fish & Wildlife Watershed Enforcement Team (WET)

What We Have Seen During Inspections



From top left to right: empty fertilizer jugs; piles of garbage and a makeshift toilet, and all found at an inspection.

Water Board Photos ©

Deforestation & Unauthorized Discharges



Growers often develop sites which cause increased discharges of sediment/soils & fill into waterways.

Water Board photos ©

Unauthorized Water Use



Above, left: Unauthorized water storage increases water supply demands. Right: Growers illegally storing water for their grows.

Water Board photos ©

Water Quality & Water Rights Violations Based on 2015 Field Inspections and Observations

Cannabis Program Enforcement/Task Force Inspections in 2015:

- ~50% had one or more moderate violations (e.g., undersized crossings, small controllable sediment sites, housekeeping issues)
- ~25% had significant violations (e.g., fill in surface waters, poorly sited and constructed roads, widespread poor housekeeping practices)
- ~25% had no violations or very minor concerns
- ~95% of sites using surface water had water rights violations;

Water Boards' Authority:

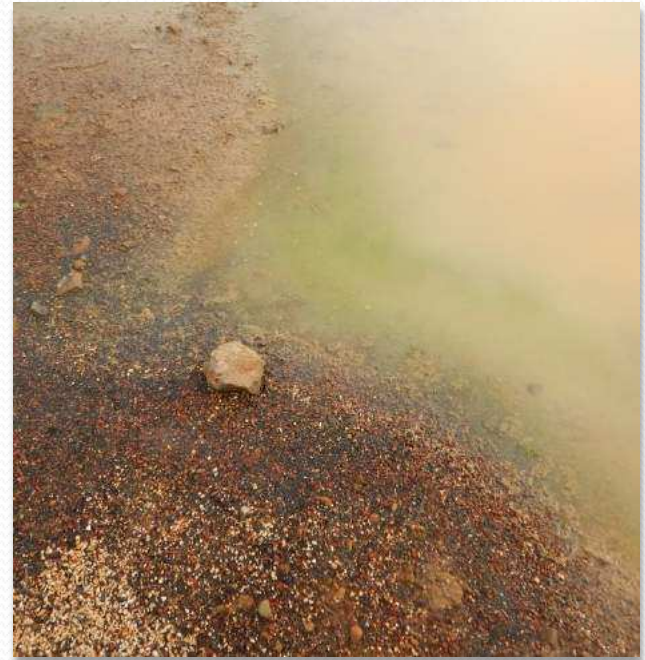
Water Quality & Water Rights



Above: Illegal water diversion at a recent inspection.

Right: Cloudy water & algal bloom due to sediments and elevated nutrients from discharge of fertilizers & potting soils.

Water Board photos ©



Water Quality Enforcement Authority

- Cleanup & Abatement Order
 - ✓ Water Code (WC) § 13304
- Administrative Civil Liability Complaint Discharges to waters of the State (WC §13350) \$5,000 per day or \$10 per gallon;
 - ✓ Discharges to waters of the U.S. (WC §13385) – \$10,000 per day & \$10 per gallon after first 1,000 gallons.

Water Rights Enforcement Authority

Unauthorized Diversion Or Use Of Water:

- ✓ \$500 per day or during drought up to \$1,000 a day & \$2,500 for each acre-foot of water diverted or used in excess of that diverters' water right (WC § 1052)

Violation Of Permit Or License Terms & Conditions:

- ✓ \$500 per day (WC §1846)

Reporting Violations:

Statement of Diversion & Use

- ✓ Liability \$1,000/Statement/ \$500 a day the violation continues after 30-day notice pursuant to *WC § 5107(c)(1)*.
- ✓ Annual Progress Reports
 - ✓ \$500 a day for each day that the violation occurs. (WC §1831)

Waste & Unreasonable Use And/or Public Trust Violations

CA Fish & Wildlife Enforcement Authority



FGC §1602 – An entity may not: substantially divert or obstruct the natural flow; substantially change or use material from; deposit or dispose debris into any river, stream, or lake without first notifying CDFW in writing. CDFW determines if notification is complete, and the entity pays applicable fees.

FGC §12025(a)(1)(A) – Up to \$10,000 for each violation of §1602 in connection with cannabis cultivation while trespassing on public or private land;

FGC §12025(b)(1)(A) – Up to \$8,000 for each violation of §1602 in connection with cannabis cultivation on land not subject to trespass;

FGC §12025(b)(2) Each day violation occurs or continues to occur is a separate violation.

Task Forces Accomplishments To Date

- CDFW & Water Boards participated in over 220 inspections in Northern CA Counties, including: Shasta, Tehama, Butte, Humboldt, Trinity, & Mendocino;
- Documented many water right & water quality violations including unauthorized diversion & use violations;
- Served more than 50 detailed Water Rights & Water Quality inspection reports to property owners detailing violations, potential violations, & provided compliance recommendations ;
- Substantial increase in Water Rights reporting and applications;
- Significant voluntary compliance in response to inspections & CAOs;
- Issued formal enforcement orders requiring site clean up and seeking in liability.

Task Force Accomplishments (cont.)

Department Of Fish & Wildlife

- Documented more than 522 violations of Fish & Game Code with cannabis cultivation;
- Served more than 50 Notice of Violations;
- 6+ Administrative Civil Actions Initiated;
- 3 + cases referred to DA;
- About 75% response when NOV filed from parties attempting to comply;
- LSA Applications submitted daily by landowners desiring compliance.



Task Force Case Highlights

- **The Central Valley Regional Water Board imposed \$297,400 liability against property owner & contractor (June 2015)**
 - 1st penalty action with multiagency Cannabis Pilot Project;
 - Large-scale grading activities resulting in actual and potential harm to surface waters in the Ono area of Shasta County;
 - Grading resulted in unlawful discharges of sediment to pristine surface waters that provide habitat to aquatic organisms which are an important food source for fish, amphibians, birds & other wildlife.
 - The contractor conducted the grading operations on part of the property without permits & was held jointly liable for up to \$139,700 of the penalty.

Task Force Case Highlights (cont.)

- The Central Valley Regional Water Board Results in \$100,00 in liability against property owner (March 2016)
- Property owner or his tenant developed property for a large marijuana grow & as a result it is alleged that wastes & discharges harmed the environment.
- Interesting 5th Amendment issues & landowner liability issues. [Owner has refused to name the leasee of the property.]
- Resulted in settlement where property owner agreed to clean up property and pay liability. Portion of liability was provided to DFW.
- Violations include: Clean Water Act violations; Water Code Violations; Basin Plan Violations.

Task Force Case Highlights (cont.)

State Water Board Enforcement against Bulk Water Hauler results in \$35,000 Settlement (October 2015)

ACL Complaint issued for Water Rights Violations against Trinity County property owner for unauthorized diversion from Hayfork Creek;

Settlement for full amount of proposed liability;

- Made possible by remote surveillance with DFW's assistance;
- Some water deliveries were allegedly as far away as the Mad River watershed in Humboldt County.

Questions?

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