

Marijuana Cultivation

Regulation and Enforcement of Unauthorized Diversions; Discharges of Waste to Surface and Groundwater

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OVERVIEW

- Background
- The Problem
- Regulatory Overview
- Enforcement
- Strategy
- Moving Forward



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

THE PROBLEM

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

Lt. DeWayne Little

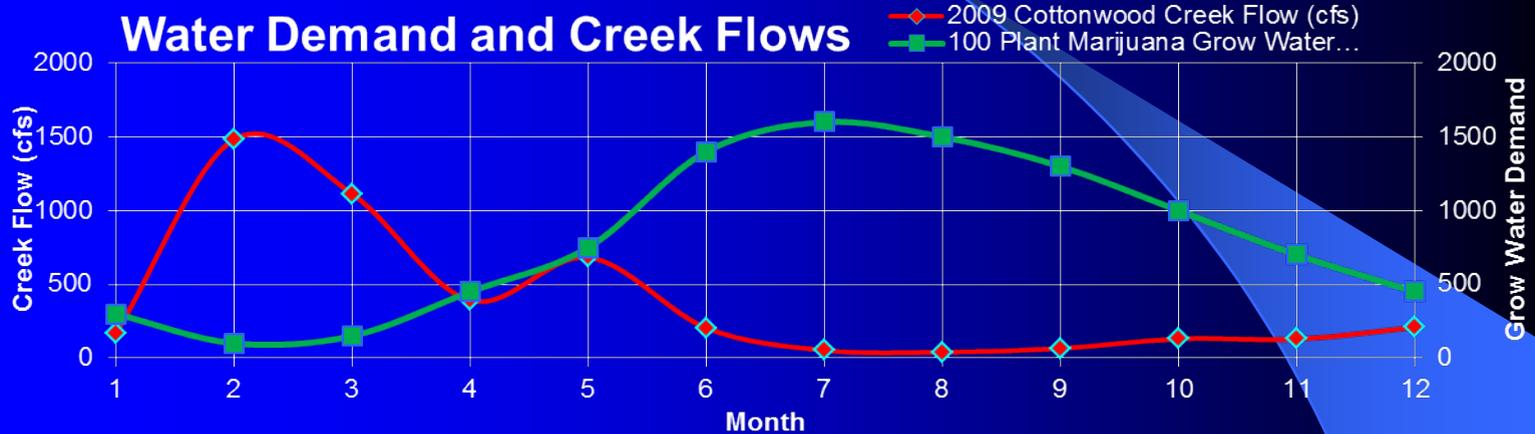
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Illegal Water Diversions



Water Demand



Illegal Grading Activity



Chemical Usage



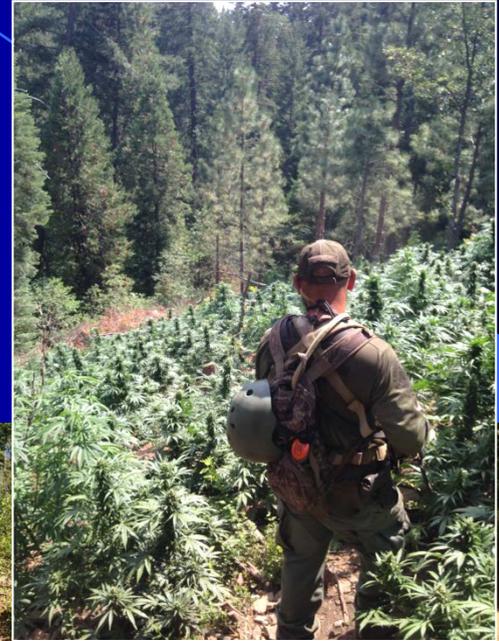
Domestic Wastes



Threats to Wildlife



Timber Conversion



REGULATORY OVERVIEW

- Prop 215
- Federal Treatment of Marijuana
- 2013 DOJ Memo
- Clean Water Act vs. Water Code
- Types of Cultivators
- Authority to Regulate

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Federal Law on Cannabis

- Controlled Substances Act (CSA) bars marijuana production for **any** purpose.
- DEA and HHS consider cannabis to have “unproven abuse potential and toxicity,” and therefore cannabis merits Schedule I treatment.
- Single Convention on Narcotic Drugs prohibits production and supply of specific drugs, including marijuana.

Compassionate Use Act of 1996 (Prop 215)

- Ballot measure, added to Health and Safety Code
- “Seriously ill” have right to obtain and use marijuana with a Doctor’s recommendation
- Prop 215 does not.
 - Change federal law
 - Allow cultivation for nonmedical purposes
 - Abrogate water quality/ wildlife protection laws

2013 DOJ Guidance Memo

- Prevent distribution by criminal enterprises
- Prevent diversion to states where it remains illegal
- Prevent violence and the use of firearms in the cultivation and distribution of marijuana
- Prevent the growing of marijuana on public lands

3 Types of Cultivators

- **Illegitimate Cultivators**: The Bad Guys
 - Affiliated with Criminal Organizations
 - Sham Compliance, Unaware Landowners
- **Quasi-Legitimate Cultivators**: Grow under 215, but do not comply with their environmental obligations
- **Legitimate Cultivators**: Responsible Business Owners/Stewards of the Environment

Is Marijuana Different? No.

- Legal ambiguities surrounding marijuana have little bearing on the Board's regulatory authority over water quality
- Regardless of the legality of the activity, the Board must address the wastes in the discharge and the threatened impacts associated with those wastes
- The Board can address water quality concerns without authorizing or sanctioning the cultivation, use, or sale of marijuana

ENFORCEMENT

- Public vs. Private Lands
- Liability
 - Water Board Toolbox
 - Fish & Wildlife Toolbox

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Public vs. Private Lands

Program focuses on Private Lands

- Public Lands – Water Boards Play a Support Role Only- Expertise on Impacts to Water Quality, Supply and Remediation – Per Se Illegal
- Fish & Wildlife – May participate in both arenas

Liability – Water Board



- Water Code section 13304 – CAOs
- Clean up the Waste – Discharged or deposited where it probably will be discharged – in violation of order/prohibition or that creates a condition of pollution or nuisance
- **Broad Liability – “Any person” includes owners, operators (Lessee’s), and contractors**
- Regional Boards may take independent action to clean up and then place a lien on the property
- Attorney General referrals to compel compliance
- Civil liabilities for violations



Liability – Fish & Wildlife

- Identify Violations
 - Fish and Game Code and Water Code

- Select Appropriate Type of Prosecution
 - Administrative Process
 - SWRCB's Clean up and Abatement Orders and/or Admin Civil Liability Actions
 - CDFW's Administrative Civil Penalty Process (new enforcement tool)
 - Judicial Process
 - Coordinate cases with district attorney, circuit prosecutor, or /and attorney general when appropriate

- Watershed Enforcement Team
 - Search warrants
 - Investigation reports
 - Environmental Impact & Penalty Assessments
 - Lake and Streambed Alteration Agreements/CAOs



Fish and Game Code violations and maximum penalties



Stream diversion and obstruction

§ 1602 – No substantial diversion or obstruction of stream or lake without first notifying CDFW



Land clearing and sediment deposition into a watercourse

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

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

(b)(2) each day violation occurs or continues to occur is a separate violation

Fish and Game Code violations and maximum penalties



§ 5650 prohibits the deposit of any substance or material deleterious to fish, plant life, mammals or bird life into waters of the state

§ 12025(a)(2) – up to \$40,000 for violation of § 5650 – in connection with cannabis cultivation trespassing on public or private land

§ 12025(b)(1)(B) – up to \$20,000 for violation of § 5650 in connection with cannabis cultivation on land not subject to trespass

§ 5652 prohibits the disposal of trash within 150 feet of the high water mark of waters of the state

§ 12025(a)(3) – up to \$40,000 for violation of § 5652 – in connection with cannabis cultivation trespassing on public or private land

§ 12025(b)(1)(C) – up to \$20,000 for violation of § 5652 in connection with cannabis cultivation on land not subject to trespass



Chemical and fertilizer waste



Trash pit adjacent to stream channel

CDFW - Administrative Civil Penalty Process



- SB 861, effective June 20, 2014 – amended FGC § 12025 regarding violations of §1602, §5650, or §5652 in connection with cultivation of a controlled substance, including cannabis cultivation
 - § 12025 (a) – penalties can be imposed on a person who trespassed on private land (not only on public land)
 - § 12025 (b) penalties can be imposed on a person cultivating cannabis on land the person owns or occupies with the consent of the landowner
 - § 12025 (e) grants CDFW authority to administratively impose civil penalties set forth in § 12025 (a) and (b)

STRATEGY

Regulation and Enforcement of Unauthorized Diversions; Discharges of Waste to Surface and Groundwater Caused by Marijuana Cultivation

STRATEGY REGULATION AND ENFORCEMENT OF
UNAUTHORIZED DIVERSIONS; DISCHARGES OF WASTE
TO SURFACE AND GROUNDWATER CAUSED BY
MARIJUANA CULTIVATION

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE



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STRATEGY

1. Limitations
2. Roles and Responsibilities
3. Proposed Implementation Plan
 - 3.a. Permitting and Long Term Funding
 - 3.b. Inspections
 - 3.c. Enforcement
 - 3.d. Education and Outreach
 - 3.e. Coordination with Other Agencies
 - 3.f. Cleanup Options
 - 3.g. Health and Safety Plan
 - 3.h. Challenges
 - 3.i. Implementation Schedule

Underlined Italics = BCP Requirements

Permitting & Long Term Funding

- **Long Term Solution:**
 - Need to further investigate pesticide and fertilizer use, sedimentation & wildlife issues
 - Fee structure/Coalition Approach
 - Permit Development
- **Short Term Solution?**
 - Basin Plan Prohibition
 - Conditional Waiver/Permit (Under Development)
 - Cleanup & Abatement Orders as a Backstop

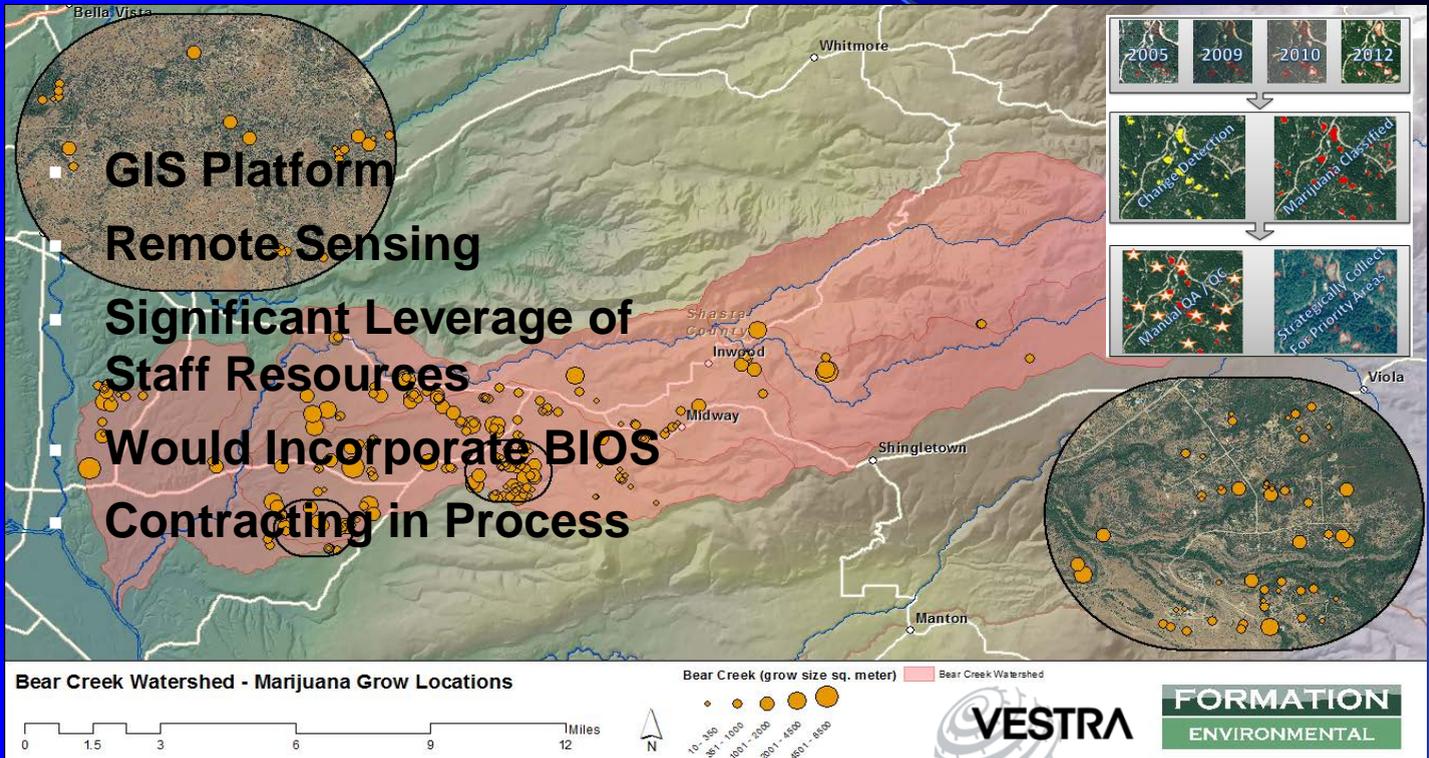
Inspections

Geographic Approach

- Conducting inspections are time intensive
- Resources are limited
- Simply responding to complaints as they come in will not provide the best results
- Staff will instead pursue a well organized systematic approach to identifying key watersheds and inspection targets
- Highly coordinated event, County LE, CDFW LED, CDFW Wildlife, Water Board, and other County Department staff

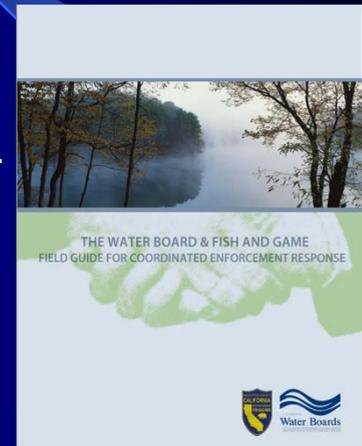
Inspections

Cannabis Identification and Prioritization System



Enforcement

- 2011, Water Board and Fish & Game's Field Guide for Coordinated Enforcement Response
- Joint Prosecution Agreements
- Cleanup & Abatement Orders
 - Target Property Owner, Growers, Contractors, Etc.
 - Short and Long Term Requirements
 - Prepared by Licensed Professional
- Administrative Civil Liability
 - Water Code or Fish & Game Code
- Landowner will be named, maybe others
- Can refer egregious complaints to Attorney General



Education and Outreach

- Targeted Enforcement
- Develop Fact Sheets/ Web Resources, Post and Distribute
 - Applicable Laws, Regulations and Policies
 - Applicable Permits
 - Relevant Best Management Practices
 - Penalties
 - Contacts
- Continue to Work with Industry Groups
- Coordinate with State and Local Agencies

Coordination w/ Other Agencies

Current Working Group Participants

CalEPA	Assemblyman Dan Logue's Office
State Water Board	Senator Jim Nielsen's Office
Central Valley Water Board	Congressman Doug LaMalfa's Office
North Coast Water Board	Multiple Counties
California Dept. of Fish and Wildlife	Local Law Enforcement
California Dept. of Water Resources	Rural County Representatives of California
California Dept. of Forestry & Fire Protection	League of California Cities
California Dept. of Justice	Environmental Groups
California District Attorneys Association	Consultants

Coordination w/ Other Agencies

California Dept. of Pesticide Regulation

Future Working Group Participants

California Dept. of Toxic Substances Control

U.S. Fish and Wildlife Service

Board of Equalization

California Forestry Association

Cal Recycle

California Cattlemen's Association

California Cannabis Industry Association

California Farm Bureau

Western Plant Science Association

Construction Industry

Emerald Growers Association (Humboldt)

California NORML

Americans for Safe Access

Other Interested Parties...

Cleanup Options

- Compel Responsible Parties First, then consider
- CalRecycle
- California Department of Toxics Substances Control
- California National Guard
- AB1284 - Timber and Engineered Wood Products Assessment: Forest Restoration Grants, (AB1492 Money for Cleanup)
- May be others

Challenges

- Landowners
- Migratory Nature of Growers
- Hazardous Waste/Chemical Removal & Disposal, Costs, and Liability
- Illegal Water Diversion Penalties (Currently \$500 Fine)
- Earth Work Contractors

The Water Boards and
the California Department of Fish & Wildlife
appreciate the Board of Forestry's Support
in this effort



Questions?

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