Marijuana Cultivation

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

Cris Carrigan
Director, State Water Board’s Office of Enforcement

Clint Snyder
Assistant Executive Officer, Central Valley Water Board

Lt. DeWayne Little
Supervising Warden, California Department of Fish and Wildlife
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
Supervising Warden, California Department of Fish and Wildlife
Illegal Water Diversions
Water Demand

Water Demand and Creek Flows

- 2009 Cottonwood Creek Flow (cfs)
- 100 Plant Marijuana Grow Water...

Cooperative Effort: Water Boards and Department of Fish & Wildlife
Illegal Grading Activity
Chemical Usage

Cooperative Effort: Water Boards and Department of Fish & Wildlife
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

Clint Snyder
Assistant Executive Officer, Central Valley Water Board
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

Cooperative Effort: Water Boards and Department of Fish & Wildlife
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

Cris Carrigan, Attorney
Director, State Water Board’s Office of Enforcement
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

Cooperative Effort: Water Boards and Department of Fish & Wildlife
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

Cooperative Effort: Water Boards and Department of Fish & Wildlife
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 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

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

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

   Underlined Italics = BCP Requirements

   3.f. Cleanup Options
   3.g. Health and Safety Plan
   3.h. Challenges
   3.i. Implementation Schedule

Cooperative Effort: Water Boards and Department of Fish & Wildlife
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

Cooperative Effort: Water Boards and Department of Fish & Wildlife
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

Cooperative Effort: Water Boards and Department of Fish & Wildlife
Inspections
Cannabis Identification and Prioritization System

- GIS Platform
- Remote Sensing
- Significant Leverage of Staff Resources
- Would Incorporate BIOS
- Contracting in Process

Cooperative Effort: Water Boards and Department of Fish & Wildlife
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

Cooperative Effort: Water Boards and Department of Fish & Wildlife
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

Cooperative Effort: Water Boards and Department of Fish & Wildlife
### Coordination w/ Other Agencies

#### Current Working Group Participants

<table>
<thead>
<tr>
<th>Agency/Association</th>
<th>Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>CalEPA</td>
<td>Assemblyman Dan Logue’s Office</td>
</tr>
<tr>
<td>State Water Board</td>
<td>Senator Jim Nielsen’s Office</td>
</tr>
<tr>
<td>Central Valley Water Board</td>
<td>Congressman Doug LaMalfa’s Office</td>
</tr>
<tr>
<td>North Coast Water Board</td>
<td>Multiple Counties</td>
</tr>
<tr>
<td>California Dept. of Fish and Wildlife</td>
<td>Local Law Enforcement</td>
</tr>
<tr>
<td>California Dept. of Water Resources</td>
<td>Rural County Representatives of California</td>
</tr>
<tr>
<td>California Dept. of Forestry &amp; Fire Protection</td>
<td>League of California Cities</td>
</tr>
<tr>
<td>California Dept. of Justice</td>
<td>Environmental Groups</td>
</tr>
<tr>
<td>California District Attorneys Association</td>
<td>Consultants</td>
</tr>
</tbody>
</table>

Cooperative Effort: Water Boards and Department of Fish & Wildlife
## Coordination w/ Other Agencies

<table>
<thead>
<tr>
<th>California Dept. of Pesticide Regulation</th>
<th><strong>Future Working Group Participants</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>California Dept. of Toxic Substances Control</td>
<td>U.S. Fish and Wildlife Service</td>
</tr>
<tr>
<td>Board of Equalization</td>
<td>California Forestry Association</td>
</tr>
<tr>
<td>Cal Recycle</td>
<td>California Cattlemen’s Association</td>
</tr>
<tr>
<td>California Cannabis Industry Association</td>
<td>California Farm Bureau</td>
</tr>
<tr>
<td>Western Plant Science Association</td>
<td>Construction Industry</td>
</tr>
<tr>
<td>Emerald Growers Association (Humboldt)</td>
<td>California NORML</td>
</tr>
<tr>
<td></td>
<td>Americans for Safe Access</td>
</tr>
<tr>
<td></td>
<td>Other Interested Parties…</td>
</tr>
</tbody>
</table>
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

Cooperative Effort: Water Boards and Department of Fish & Wildlife
Challenges

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

Cooperative Effort: Water Boards and Department of Fish & Wildlife
The Water Boards and the California Department of Fish & Wildlife appreciate the Board of Forestry’s Support in this effort.
Questions?

Cris Carrigan
Director, State Water Board’s Office of Enforcement

Clint Snyder
Assistant Executive Officer, Central Valley Water Board

Lt. DeWayne Little
Supervising Warden, California Department of Fish and Wildlife

Cooperative Effort: Water Boards and Department of Fish & Wildlife