

## **Making Sense of the Recent Waste Water Discharge Order No. 2015-0023**

The increased cultivation throughout the North Coast Region has resulted in significant waste discharges and a loss of instream flows associated with improper development and diversion of springs and streams, to the cumulative detriment of beneficial uses of water.

On August 13, 2015, the North Coast Regional Water Quality Board took the lead among the nine Regional Water Quality Boards in California by passing Order No. 2015-0023, “Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects In the North Coast Region.” While the North Coast Board was the first (followed by the Central Valley Board in early October) all nine of the Boards are mandated to promulgate Cannabis Regulations under new laws passed by the Governor.

### **The Order**

The Board’s Order provides an incentive for existing cannabis growers by offering a waiver to early adopters. Those who respond to the Order by February 15, 2016 will fall under a tiered system according to the nature of their operations and the risk those operations represent for water quality. Those who do not respond will be subject to civil liabilities and other formal enforcement actions including state liens applied to their property, and potential forfeiture of their land.

### **To whom does the Order apply?**

**Any** landowner or operator (including tenants) currently cultivating cannabis resulting in a discharge of waste to an area that could affect waters of the State (including groundwater) will fall within one of the three tiers. Properties with site characteristics or development that have impacts that cannot be ultimately mitigated to less than significant levels require regulation under a separate and individual order. Similarly, new operations and developments that post-date the Order do not qualify for the waiver and must obtain coverage under existing permitting structures.

### **What does the Order provide?**

The Order authorizes discharges of waste from cannabis cultivation sites and associated activities. Most water quality impacts are associated with erosion and sediment delivery, changes to riparian systems that reduce shade and affect water temperatures, over allocation of water sources, and chemical/pollutant discharges. The Order contains requirements that eliminate, minimize, or mitigate these impacts to protect and/or restore water quality

### **What are the Tiers?**

The Order provides for three tiers of regulations, depending upon the level of water quality impacts from the particular cultivation operation.

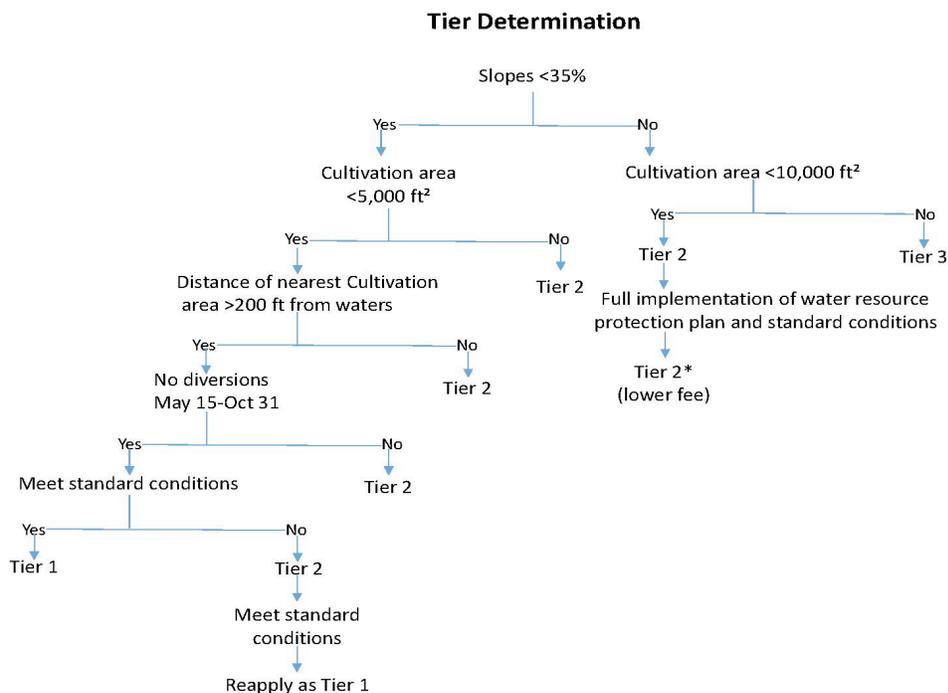
**Tier 1:** The first tier is for dischargers with low risk to water quality based on certain physical characteristics of the operation such as slope, proximity to surface water, and scale of the operation.

**Tier 2:** Tier 2 is for dischargers with operations that present a higher threat to water quality and water resources. The site does not meet the characteristics of Tier 1, or the site meets the Tier 1 characteristics but does not meet standard conditions.

**Tier 2\*:** As with the standard second Tier, this Tier is for dischargers with operations that present a higher threat to water quality and water resources. The site does not meet the characteristics of Tier 1, however, the cultivator has fully implemented a Water Resource Protection Plan and has met all Standard Conditions. A lower fee level applies to Tier 2\* relative to Tier 2.

**Tier 3:** The third tier is for dischargers with sites requiring cleanup, restoration, and/or remediation based on current or past land development/management activities that have resulted in a discharge or threatened discharge in violation of water quality standards. Such conditions may include, but are not limited to, filled watercourses or wetlands, perched fill, steep cut slopes, roads, or fill prisms that cannot be stabilized sufficiently to prevent erosion and sediment delivery to surface waters (either on or off site).

**Determining which Tier applies to a given cultivation operation**



**Water quality...but also water supply**

While the Order focuses specifically on water quality issues, a close reading of the Order demonstrates that water supply questions are also relevant and up for investigation pursuant to the water quality regulations. The Order specifically states that the over-diversion of surface water for cannabis cultivation creates a significant impact on instream water quality and beneficial uses. The Regional Water Boards may therefore request that the State Water Board consider various water right actions and can refer cases to the Office of Enforcement. Additionally, the Regional Water Boards may require information and make inspections of the discharge facilities, including information pertaining to the diversion and use of surface waters.

Cultivators with operations that do not have sufficient valid rights to water supply should seek consultation with us to help find opportunities to supplement their existing (or non-existent) water rights.

### **What does it all mean?**

Any Cannabis cultivators who grows on private land in the North Coast or Central Valley Region (and soon throughout the state), even contractors or renters of that land, must file a report with the Regional Water Board by February 15, 2016 to comply with the Order. All Dischargers, regardless of Tier, are subject to the standard conditions provided in the Order, including a Monitoring and Reporting requirement, and other general terms, provisions and prohibitions.

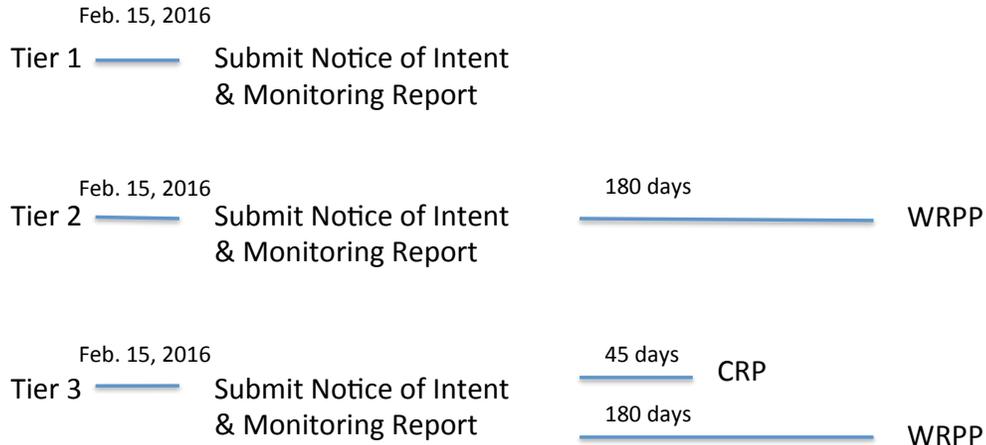
While the burden on individual growers could be substantial depending on their operations, the benefit of bringing those operations into compliance with the new regulations is the protection that the Order's waiver provides against any past and present violations, and the safe harbor it provides for those currently seeking compliance under its terms.

### **What needs to be done?**

The Board has imposed a tight time frame for acting to take advantage of the opportunity to come into compliance under the Order and gain the protections provided by the Order's waiver. Dischargers must apply for coverage under the Order by submitting a completed Notice of Intent (NOI) Form and a Monitoring Report by February 15, 2016. The submission of the NOI constitutes notice that the Discharger requests and receives authorization to discharge pursuant to the Order.

Dischargers under Tier 2 must develop and begin implementing a Water Resource Protection Plan within 180 days of submitting their NOI. Tier 3 dischargers must develop and submit a Cleanup and Restoration Plan within 45 days of the submittal date of the NOI, and begin implementation no later than 30 days from approval of the plan.

Required actions after determination of applicable Tier



All permittees must file an annual report by March 31

WRPP = water resources protection plan

CRP = cleanup and restoration plan

**How can Tom Hicks Law help?**

Tom Hicks Law is well versed in the intricacies of the new Order, and has already established an alliance with the environmental engineering firm Stillwater Sciences to evaluate each clients' operations and help them understand how the Order applies to them and provide options for the steps that need to be taken to comply with its terms. Call us to discuss how we can best serve your needs.