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BY EMAIL ONLY

April 16, 2021

County of Mendocino - Board of Supervisors
Glenn McGourty
Maureen Mulheren
Ted Williams
Dan Gjerde
John Haschak

RE: Water Law Perspective in Support of Phase 3 Cannabis Expansion

Dear Members of the Board,

My name is Tom Hicks and I am a water rights attorney **submitting these comments in support** of the proposed expansion of cannabis production under Phase 3, of up to ten percent (10%) of qualified zoning designations. I do not write them on behalf of any particular client and have not been paid to submit these comments.

Comments

I have read much of the correspondence already on file with the Board of Supervisors and hear the different concerns specific to potential impacts of the ordinance amendment to fish and game resulting from depletion of water resources from the creeks, springs, and tributaries of distinguished Mendocino County watersheds such as the Russian and Eel Rivers among others. Salmonids such as coho salmon and steelhead trout are sensitive to low-flows, especially in the late summer, when water temperatures might reach mortal thresholds, or outright dewatering might strand fish in isolated pools. Clearly, that is not the intent of the Phase 3 Ordinance.

While the long-term trendline of impacts to these species can be attributed to many causal factors, at this critical time it must be emphasized that **state-licensed cannabis growers already receive some of the most intense environmental and regulatory scrutiny of any category of farmer in California, if not the country.** Mendocino cannabis growers who seek compliance with county permits **MUST** comply with state water quality and water rights regulations, especially under the differing jurisdictions of the **State Water Resources Control Board, Regional Water Quality Control Board, and Department of Fish and Wildlife.**

Cannabis growers who are in compliance with state licensing requirements are salmon-friendly by definition. Farm expansion beyond 10,000 square feet is premised on an assumption that there is (at different times of the annual hydrograph) enough water available onsite to do so. Mendocino growers already work with specialized water resources consultants to quantify precipitation and streamflow to understand when landowner-cultivators can pump groundwater or divert surface flow without causing injury to other users of water or the environment. In other instances, growers might be capturing rainwater or storm water runoff.

State water policy is already drought tolerant and working within a climate change theme of resilience: resilient environments, resilient communities, resilient economies. These themes would seem to resonate with Mendocino County priorities and values.

California was only recently in a separate multi-year drought. The State Water Board, in particular, has comfort and familiarity issuing emergency drought regulations and orders that, if needed during dry or critically dry years, will curtail junior uses of water. Separately, such state-level rules and regulations have, at times, included pumping and diverting constraints on other water-using industries for “frost control” or to protect the “sustainable yield” of groundwater use. CDFW issues Lake and Streambed Alteration Agreement (Section 1602) permits with explicit bypass flow requirements to prevent dewatering of rivers and creeks.

Lastly, it is important to emphasize that the size of a farm’s acreage does not make a cannabis grower good or bad. It is the quality of management and the ethos of each grower.

Background

Tom Hicks is a California water law, real property, and conservation attorney who represents a variety of public interest organizations, landowners, and others on select public policy, transactional, administrative, regulatory, and litigation matters.

Before law school Tom was an energy and water policy analyst at the Natural Heritage Institute and the founder of the Headwaters Institute. He has interned at the San Francisco Office of the City Attorney, California State Water Resources Control Board, and American Rivers. Tom founded and chaired the inaugural California Water Law Symposium sponsored by leading northern California law schools and is a Board member. He is the author of the Water Education Foundation’s *2020 Layperson’s Guide to Water Rights Law*, recognized as the most thorough explanation of California water rights law available to non-lawyers. Tom is a former whitewater raft guide, kayaker, and Colorado Outward Bound School instructor. He holds a JD from the University of San Francisco School of Law and a BA from the University of Vermont.

Conclusion

Your vote in favor of the proposed expansion of cannabis production under Phase 3 will not injure or harm fish if these farms are in compliance with State of California water laws and regulations. These farms will not be able to grow if there is no water. Mendocino County can provide appropriate protection for its farmers and fish at the same time. Please call me directly at 415.309.2098 if you have any questions or I can be of any further assistance.

Sincerely,



Thomas Hicks