

California takes new approach on water regulation for pot farms

By Peter Hecht
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The California Department of Fish and Wildlife helicopter circled over steep timberland in Humboldt County's coastal mountains, prowling for potential water diversions and environmental damage caused by what is arguably the state's most lucrative agricultural product: marijuana.

The problems weren't hard to find.

The pot farms below sprawled out with factory-like orderliness. From the air, the rows of budding plants resembled citrus orchards. Leveled terraces supported plastic-lined greenhouses capable of producing multiple marijuana yields. Giant water tanks stood nearby.

Lt. DeWayne Little, a veteran game warden with a muscular build and a shaved head, snapped photos of the clearings. The view unsettled him.

"Marijuana uses about the same amount of water that corn uses," he said. "But you wouldn't grow corn up here. This area is not made for agriculture. But people are just carving out chunks of the mountain and casting that aside" for marijuana.

Little and other Fish and Wildlife officers had recently joined local narcotics teams in raiding pot farms said to be draining a half million gallons of water a day from the Eel River. But the information he gathered on the helicopter wasn't intended for a police incursion.

Little is a supervisor in a unique state effort that identifies growers willing to work with authorities to monitor water use and environmental impacts from marijuana cultivation. The compliance program signals a shift in regulatory oversight of an industry that has existed in a murky legal area since California became the first state to legalize marijuana for medical use in 1996.

Amid the state's prolonged drought, Gov. Jerry Brown last year approved \$3 million in funding to dispatch oversight officers and environmental scientists to identify and inspect water-thirsty pot gardens in sensitive natural settings. Officials from the State Water Resources Control Board and Department of Fish and Wildlife so far have visited 150 sites with growers' approval. They have issued instructions on water conservation and filed 50 notices of environmental violations.

The compliance program kicked off with 11 full-time officers from the state water board and seven from Fish and Wildlife. The specialized team primarily has focused on small and medium-scale marijuana growers in the upper Central Valley and North Coast. Under pending legislation, the program stands to be expanded statewide.

The program is not intended for outlaw growers surreptitiously using public lands, but instead targets farmers on private properties who cultivate a crop that's arguably legal if unregulated. They work in a gray corner of agriculture where rules have yet to be fully established. Without strict oversight, many growers have become environmental renegades, wasting or diverting precious water and disposing of potentially harmful fertilizers and chemicals in damaging ways.

As Little's helicopter flew over the emerald-green mountains, several armed Fish and Wildlife officers on the ground accompanied clipboard-toting Water Resource officers on visits to pot growers in Humboldt County's Willow Creek area. Authorities worry that grading for pot farming and water diversions threaten the tributary to the Trinity River and salmon populations downstream.

At their first inspection of 20 cannabis farms during a two-day operation in late July, they met brothers Steve and Howard Harvey. Steve, 74, is a retired attorney, and Howard, 71, a former construction engineering contractor. They have adjoining properties where they have grown pot for more than 40 years.

“Everybody up here when we bought this place just grew a lot of pot. It wasn’t an *industry*,” said Steve. He described seeing “not dozens, but literally hundreds” of water tanks hauled up into the forest in recent years to store siphoned water.

“We’re in a bad-news drought, and all these growers, they’re all new and they’re all about money, money, money, greed, greed, greed,” he said.

The brothers allowed the team of environmental scientists, led by Connor McIntee of the water board and Tobi Freeny of Fish and Wildlife, to inspect Howard’s 50-plant marijuana garden. The fenced ridge-top plot was modest compared to the vast cultivations common in the area, but appeared to exceed county marijuana guidelines, which allow up to 200 square feet of growing space on larger properties.

Howard told the officers he uses cannabis medicinally for skin cancer. He said he offered no product for sale. Officials said they just wanted to know about his fertilizer use, irrigation and drainage.

“Where does the water come in?” Freeny asked him.

“It comes from that tank,” he said, gesturing to a neighbor’s water storage unit.

“Does that water come from a spring?”

“Yes,” he answered, adding: “There’s one thing about the Harvey brothers – they tell the truth.”

“That’s good,” Freeny responded.

No citation was issued.

New regulatory approach

California’s four-year drought has prompted authorities to broaden their approach to regulating cannabis cultivation with the aim of protecting sensitive watersheds. In addition to the environmental compliance program, the state has begun issuing marijuana water permits and ramped up efforts to target environmental offenders through civil lawsuits.

The compliance efforts are an ambitious experiment in a state that’s home to America’s largest cannabis economy, with an estimated 50,000 marijuana gardens spanning Central Valley foothills, the Sierra Nevada and the North Coast. In Humboldt County, where the value of marijuana production is estimated at \$1 billion, authorities say there are more than 4,000 outdoor cannabis gardens, on top of an untold number of indoor sites.

The program is applauded by cannabis advocates who support oversight and permitting of growers under the state’s existing medical marijuana laws and, potentially, expanded legalization for recreational pot use under a 2016 ballot initiative.

But many are angered that the state’s compliance effort hasn’t stopped police raids on pot farms. Fish and Wildlife wardens still regularly assist local law enforcement in raids on alleged commercial marijuana growers accused of fouling the environment.

According to a recent Washington Post analysis, an outdoor marijuana grow requires a similar amount of water per acre of crop as the famously scapegoated almond. But the California chapter of the National Organization for the Reform of Marijuana Laws said its own study showed that, in terms of overall acreage, cannabis accounts for a minuscule share of California’s agricultural water consumption.

What acreage there is, environmentalists say, increasingly poses a threat to nature and water resources.

Two summers ago, Sproul Creek, a salmon-spawning ground that feeds into the Eel River watershed in a prime cannabis growing region in southern Humboldt County, went dry for the first time in memory. It dried up again last year, and again this July.

Scott Greacen, North Coast director of the environmental group Friends of the Eel River, said it's wrong to blame pot growers alone for draining watershed already "dramatically desecrated by 20th century commercial logging." But, he said, marijuana presents an additional challenge.

"The coho salmon (populations) have been pushed to the brink by logging," Greacen said. "But they're being pushed over the brink by weed."

Earlier this month, the North Coast Regional Water Quality Control Board approved plans to create the state's first-ever pot "water-resource protection" and permitting program. It would issue local permits for a fee to marijuana growers who agree to follow strict water-use rules.

That future was on display as McIntee, a state scientist based in Santa Rosa, inspected the Harvey brothers' neighbor in Willow Creek. The neighbor, who supplies water for Howard Harvey's garden, had an operation with more than 200 plants.

McIntee led a three-member team that inspected springs feeding the growers' four water tanks, which collectively hold nearly 20,000 gallons. They checked roads on the property and took notes on plant nutrients and potential seepage from the greenhouses and gardens.

"You get enough water from the springs in the winter time – so don't touch the water in the summer," McIntee told the grower.

McIntee said a farm of that size would require a water-discharge permit – a \$1,000 annual fee, under the lowest of three proposed tiers. Officials say the fee structure, still to be finalized, will be based on the scale of the growing operations and their proximity to rivers and streams. McIntee told the grower to look for details in an upcoming email.

Asking for oversight

Casey O'Neill is among those who welcome the compliance program. His HappyDay Farms near Laytonville in Mendocino County grows marijuana along with organic tomatoes, squash and melons.

O'Neill, 32, sells buds from his 25 plants (the limit per property in Mendocino County) to cannabis dispensaries and medical user groups. He said he's conscious of his environmental footprint. Straw beds beneath his gardens – located above the Foster Creek drainage system for the Eel River – capture fertilizer nutrients and prevent erosion. Meanwhile, O'Neill says he invited Fish and Wildlife officers to inspect a catch basin he's built as an alternative to tapping into local streams.

Constructed without a permit, his man-made pond collects winter rain from coastal mountains and can hold up to 2 million gallons of water. He uses solar energy to pump water to storage tanks, which feed his gardens.

In 2008, O'Neill was put on three-year's probation for felony cultivation elsewhere in Mendocino County. He said he wants no more contact with law enforcement. But he welcomes regulatory oversight by the state.

"I want to build a collaborative dialogue," O'Neill said. "I see a lot of good things happening in the cannabis industry, but as 'criminals' we don't have the ability to talk about our best practices."

While officials issued no citations over O'Neill's catch pond, the state's Central Valley Water Board recently initiated civil actions against marijuana cultivators accused of severely damaging water quality and habitat in Shasta County.

The board imposed a \$297,400 civil fine for violations of state water quality laws against Christopher Cordes, a Florida man, and local contractor Eddie Axner, for dumping tons of sediment into Cottonwood Creek, the largest undammed tributary to the Sacramento River.

In a pending case, water board staff recently recommended a \$201,400 fine against another out-of-state cultivator, Brent Vanderkam of Virginia, who is accused of rerouting tributaries to Shasta's Clover Creek for an expansive pot farm.

Meanwhile, police raids continue. In June, Fish and Wildlife agents joined sheriff's narcotics enforcement teams from Humboldt, Mendocino and Trinity counties in raiding pot farms near Island Mountain on the North Coast. The teams eradicated 86,000 marijuana plants, saying the farms were causing environmental harm.

Authorities described the farms as commercial operations with thousands of plants that were draining an estimated 500,000 gallons of water a day from tributaries to the Eel River.

Fish and Wildlife officials reported nearly 100 environmental violations from growers tapping springs, damming creeks or dumping soil. At one farm, authorities came across a massive rubber bladder bulging with 575,000 gallons of water and measuring one-third of a football field.

"We have never seen this," said Mendocino County Sheriff Tom Allman. "We don't know how they got it there. But that water either came from springs feeding into the Eel River or the Eel River itself. Either way, the river lost."

State officials say they have no choice but to pursue both avenues. The compliance program brings in farmers willing to cooperate with authorities, and the raids hold accountable scofflaws operating with blatant disregard of guidelines.

At an early-morning briefing before inspections at Willow Creek, Little said officials would counsel cannabis farmers on water use and erosion prevention; but they made no promises that offenders wouldn't face criminal or civil actions.

"We don't want there to be any misunderstanding that this is an effort to regulate the discharge from marijuana cultivation – and they're not going to get a get-out-of-jail card," he said.

In a separate operation that same day, Fish and Wildlife joined Humboldt County sheriff's deputies in an unannounced raid on a farm deemed too large for compliance inspection. Narcotics officers cut down 1,426 marijuana plants. Game wardens documented 30 alleged environmental violations, including draining excessive water from a mountain stream that, left undisturbed, provides cold water flows to sustain coho salmon in Willow Creek.

Little said the property owner, who lives in the Bay Area, wasn't there. Authorities encountered a woman from New Zealand who said she took a summer job at the farm to earn \$50,000 to buy a sailboat.

It was a different scene at the nearby farm of Duane McCall, 62, a retired property maintenance manager. A cannabis grower most of his life, McCall didn't think authorities would give him trouble over his 35 plants.

"I'm a little anxious but not scared," he said. "They've got much bigger fish to go after."

McCall told inspectors he used drip irrigation to grow his plants and fertilized with sea bird guano. McIntee, the water board scientist, told McCall he would send him an email regarding minor environmental improvements. A Fish and Game warden, who checked out McCall's storage tanks, told him: "We're good on water use."

McCall seemed flushed with affirmation.

"Cool," he told the warden. "I'm from the '60s, man. I care."

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