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Cannabis Alert

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The intersection of cannabis and wine buds environmental complication

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Businesses producing both wine and cannabis in California must be aware of challenges and opportunities created by complex state regulations.



What's the Impact?

- / Many California wine and cannabis growers have opted to co-exist, or even join forces, to maximize land use
- / Environmental questions and regulatory ambiguities remain, complicating possibilities for what should be a win-win scenario

While some wineries are competing with cannabis farmers for land, water, labor, and market share, others are embracing the rising legality of cannabis, even planting cannabis adjacent to or instead of vineyards. For those pursuing this route, differences in regulatory schemes between these two crops is complicated.

Background

Over the past decade, tensions between wine and cannabis growers in traditional California wine country mounted as some wineries alleged that cannabis cultivation lacked the comprehensive

regulation governing winegrowing, with the potential to negatively affect the region. After the 2016 passing of California Proposition 64, localities governed via a complicated patchwork of temporary licenses, creating a disjointed process without stable oversight for this “budding” industry.

For example, Santa Barbara County supervisors provided blanket approval and licenses for farmers who claimed that they were growing medicinal cannabis without requiring the submission of any evidentiary or documentary proof to support these farmers’ claims. This led to an explosion of cannabis growth in the region despite alleged environmental risks and concerns to the region’s established agricultural (predominately winegrowing) ecosystem.

Developing Issues

After years of mounting tensions, the Santa Barbara County grand jury issued a report in June 2020 (the “Report”) criticizing county supervisors for their mismanagement of the county’s cannabis production, highlighting allegations of close relationships between county supervisors and marijuana industry lobbyists, and concluding that the Board of Supervisors had “failed the people of Santa Barbara County.” The grand jury criticized the County’s *Program Environmental Impact Report* (EIR) prepared by the Planning & Development Department for the Cannabis Land Use Ordinances and Licensing Program, stating it was prepared for “use by government bodies to review and consider environmental impacts of the [Program] as part of its decision-making process,” yet, in implementation, allegedly ignored concerns from residents and farmers about cannabis growth operations near schools, as well as pesticide and insecticide drift onto vineyards and other agricultural operations.

The State of California and a number of counties responded to address these issues creating (finally!) a more comprehensive and cohesive approach to regulate cannabis farming, hopefully creating the framework to allow such farms to co-exist with wine and other agricultural operations, as well as the surrounding communities. A hallmark of that cohesive approach is the California State Water Resources Control Board (SWRCB) General Order (No. 2019-0001-DWQ) that addresses “individual and cumulative effects of water diversions and discharges associated with cannabis cultivation” and prevents and/or limits the effects on natural flow variability (the “Cannabis General Order”). This document offers a roadmap for cannabis farmers who depend on surface water diversions and/or wastewater land application for irrigation to comply with the Clean Water Act (CWA), California Water Code waste discharge requirements, requirements of the California Department of Fish and Wildlife, CAL FIRE, and CEQA and NEPA. In addition, cannabis cultivators are also required to apply for Lake and Streambed Alteration Agreements prior to commencing activities that may, for example, substantially divert or obstruct the natural flow of water. This “Cannabis Cultivation Waste Discharge Regulatory Program” was last revised in 2021 to include expanded findings and clarify monitoring and reporting requirements.

A path forward

What remains to be seen however is how this Cannabis Cultivation Waste Discharge Regulatory Program overlaps with the established, and yet concurrently shifting, rules and regulations governing wineries, especially for purposes of joint and/or replacement growing operations.

Joining the movement for a cohesive, statewide approach to irrigated crops and waste water, in January 2021, the SWRCB adopted the *General Waste Discharge Requirements for Winery Process Water* (the "Winery General Order"), based on the prior existing Regional Water Quality Control Board General Waste Discharge Requirements, especially the North Coast's General Waste Discharge Requirements for Discharges of Wine, Beverage and Food Processor Waste to Land, Order No. R1-2016-0002. With certain conditions regarding discharge timing, setbacks from surface waters and more, the new California-wide Winery General Order permits growers to utilize winery wastewater for land application as irrigation for grapes and dust mitigation. The State Water Board's rationale is because "winery process water contains organic matter and nitrogen, land applying it improves soil productivity and provides supplemental plant nutrients while simultaneously treating and disposing of the process water."

Moving to the adjacent or substitute cannabis farming scenario, the question becomes could hybrid farmers similarly utilize this Winery General Order to irrigate cannabis crops with the winery wastewater? Generally, this would seem a win-win, as it allows yet another re-use for the winery wastewater, while reducing the surface water diversion needs for cannabis growers. However, a deeper dive comparing the requirements of the Cannabis General Order and Winery General Order reveals contradictions and overlapping framework, which will require negotiation and detailed planning with the Regional Water Quality Control Boards prior to implementation. Through informal inquiries, whichever requirements are stricter will likely be applicable and enforced.

Lingering questions

Moreover, how are vintners and cannabis farmers required to regulate for the effects of different pesticides and insecticides on co-cultivated crops in these regions? What about the California State Antidegradation Policy, Resolution No. Resolution No. 68-16, that requires that existing high water quality be maintained to the maximum extent possible, balancing pollution and nuisance with the highest water quality consistent with the maximum benefit to the people of the state? If winery wastewater is applied to vineyards and cannabis farms alike, is that irrigation water seeping into the groundwater of like quality for both of these crops?

How to proceed

As the popularity of cannabis farming increases, particularly in areas such as California's traditional wine country, regulators and farmers will need to work together to flesh out the agricultural intersection of these crops and clearly delineate which regulatory scheme applies and how it will be applied.

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