

# The Core Watershed Question

Is the water source percolating groundwater or subterranean surface flow (surface water recharged by annual rainfall)?

If it is a direct diversion of surface flow, it is subject to state law (Cal. Code Regs. Tit. 23, § 2925- Cannabis Cultivation Policy)

# Bias in the Service of Expediency?

## Mr. Katherman As The Solitary Subject Matter Expert

Every citation of a “Professional Geologist” is referring to only Mr. Katherman, there is no other. Any conclusion staff came to regarding the watershed issues I raised were based on his expertise. Mr. Katherman is a member of and advisor to the Nojoqui Farms project team. Planning staff did not seek confirmation of any information with another 3<sup>rd</sup> party or contrary professional, even after they were presented with different interpretations by an equal or superior authority, Hydro-Geologist Dr. Brad Newton, a member of and advisor to my team.

Example: “... a Water Source and Water Demand Memo, dated June 2022, was prepared by a Professional Geologist in support of the proposed Project... Therefore, staff has concluded that the project will have no new impact on the water availability of surrounding properties...” (Staff Report Page 7) etc., etc., ....

Mr. Katherman’s name shows up 35 times in the complaint filed with the California EPA, SWRCB and Department of Fish & Wildlife by the Coalition for Responsible Cannabis on September 7th.

**He has been and is a prominent paid consultant to the local cannabis industry.**

# Bias in the Service of Expediency?

## The 2018 PEIR Dismisses Environmental Protections

Staff is technically doing their job, but the guiding PEIR *doesn't even attempt to address the environmental conditions of an already impaired dryland ecosystem* like ours. The PEIR lacks project-level environmental review, but staff refers to it as though the PEIR and the *unverified* information provided by Mr. Katherman is adequate:

“ ... will not result in additional water demand *impacts beyond what was disclosed in the PEIR...*” (Staff Report Page 7 [4])

“ ... *No additional cumulative impacts were identified*, and therefore no new environmental document is required under section 15162.” (Staff Report Page 9 [3])

The PEIR quickly runs right past environmental red flags. Surface water wells throughout our watershed have gone dry very recently *due to the cumulative impacts* of low rainfall and intensive pumping. It is *because* staff did their job relative to the PEIR that they were wrong about impacts.

# SWRCB Cannabis Cultivation Policy

Cal. Code Regs. Tit. 23, § 2925 - Cannabis Cultivation Policy - Principles and Guidelines for Cannabis Cultivation

“All water diversions for cannabis cultivation from a surface stream, subterranean stream flowing through a known and definite channel (e.g., groundwater well diversions from subsurface stream flows), or other surface waterbody are subject to the surface water Numeric and Narrative Instream Flow Requirements.”

# SWRCB Cannabis Cultivation Policy

## The Purpose of the Policy

The purpose of the Policy is to ensure that the diversion of water and discharge of waste associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs.

The proper identification of the water source is paramount. The 1999 Water Resources Control Board case regarding Garrapata Creek provides clarity...

# SWRCB Cannabis Cultivation Policy

## Decision 1639 (1999)- The Garrapata Creek Case

The following physical conditions must exist for groundwater to be classified as a subterranean stream flowing through a known and definite channel (i.e., surface water):

- A subsurface channel must be present;
- The channel must have relatively impermeable bed and banks;
- The course of the channel must be known or capable of being determined by reasonable inference; and
- Groundwater must be flowing in the channel.

**EXHIBIT 2**

*Nojoqui Farms' Main Well is pumping from a Subsurface Channel...*

# SWRCB Cannabis Cultivation Policy

## If Its A Surface Water Well

**A CANNABIS CULTIVATOR SHALL NOT DIVERT FROM A SURFACE WATER (INCLUDING SUBTERRANEAN STREAM FLOW) FOR CANNABIS CULTIVATION BETWEEN APRIL 1 AND OCTOBER 31; AND THAT BETWEEN NOVEMBER 1 AND MARCH 31, CANNABIS CULTIVATORS SHALL NOT DIVERT FROM A SURFACE WATER OR FROM A SUBTERRANEAN STREAM FOR CANNABIS CULTIVATION AT A RATE MORE THAN A MAXIMUM INSTANTANEOUS DIVERSION RATE OF 10 GALLONS PER MINUTE, UNLESS AUTHORIZED UNDER AN EXISTING APPROPRIATIVE WATER RIGHT**



# EXHIBIT 3

To cite historical water usage on rural lands- count no less than 20 years (1997- 2017)

- Pork Palace **never** had wells go dry before 2009. Because of this, I asked Shannon for another 10 years of metered water usage.
- 5 sequential years of below average rainfall **and** intense Nojoqui Farms pumping from 2011 to 2016 & the watershed was drying up- Restoration Oaks, Family Ranch Produce, Pork Palace & maybe Nojoqui Farms wells in trouble.
- Nojoqui Farms wells are obviously **not isolated from the creek**. (Staff Report Page 6)

Rain Year	Rainfall in Inches	Nojoqui Farms Use	Restoration Oaks Ranch	Pork Palace	Family Ranch Produce
2002-2003*	18				
2003-2004*	9				
2004-2005*	40				
2005-2006	6				
2007-2008	24				
2008-2009	14				
2009-2010	29.5	114.9 AF		main well dry, trucked in water, drilled 1st ~250' well- excessive boron	
2010-2011	32	164.7 AF		main well dry, trucked in water, installed RO system, drilled 2nd ~250' well- excessive boron	
2011-2012	12	121.0 AF		main well dry, used RO	main well dry, drilled ~250' well- excessive boron
2012-2013	8.75	45.3 AF		main well dry, used RO	main well dry
2013-2014	9	no data		main well dry, RO down, trucked in water	main well dry
2014-2015	8.75	91.2 AF		main well dry, used RO	main well dry
2015-2016	12	69.8 AF	shared well went dry, switched to FH resevoir direct	main well dry, RO down, trucked in water, drilled 3rd ~250' well- excessive boron	main well dry
2016-2017*	20	50.0 AF	N/A	main well dry, used RO	main well dry

## HOW MANY ACRE-FEET IS TOO MANY? (WE DON'T KNOW)

1. WE'VE HAD MANY MULTI-YEAR SPANS OF LOW RAINFALL SINCE THE 1950's (SEE EXHIBIT 5). WELLS GOING DRY IN THE LAST DECADE IS NOT A RESULT OF LONGER-TERM CLIMATE CHANGE.
2. IF THE WATER SOURCE FOR ALL THE WELLS WAS PERCOLATING GROUNDWATER AND NOT SUBSURFACE FLOW RECHARGED BY ANNUAL RAINFALL, WHY DID ALL THE WELLS GO DRY IN THE SAME RECENT PERIOD OF BELOW AVERAGE RAINFALL AND INTENSIVE PUMPING?
3. WHAT HAPPENED TO THE VISIBLE SURFACE WATER IN THE CREEK BETWEEN 2012 AND 2016? HOW MUCH STANDING WATER FOR EGG-LAYING OF RED-LEGGED FROG? WHAT OF THE OTHER FAUNA AND FLORA OF THE WATERSHED?
4. WHAT HAPPENS IF ANYONE IN OUR LITTLE WATERSHED STARTS INTENSIVELY PUMPING (AGAIN) DURING AN EXTENDED SPAN OF BELOW AVERAGE RAINFALL?
5. HOW MANY ACRE-FEET OF PUMPING, COMBINED WITH SEQUENTIAL YEARS OF LOW RAINFALL, IS TOO MANY ACRE-FEET? HOW CAN WE EVEN PRETEND TO KNOW WITHOUT AN ENVIRONMENTAL ASSESSMENT OF THE WATERSHED?

ACCORDING TO THE SB COUNTY FLOOD CONTROL DISTRICT (Buellton station) we have had below average rainfall in 8 of the last 10 years- between 2011/12 and 2020/21

2011-12	11.54
2012-13	7.79
2013-14	5.87
2014-15	6.94
2015-16	10.75
2016-17	20.16
2017-18	8.12
2018-19	19.22
2019-20	15.43
2020-21	8.57

- The temptation is always to pump more during a drought, not less. Dryland farmers plan worst case water scenarios based on acreage and plant types.
- 20+ acres of cannabis and 26 acre-feet of water might be too much for our tiny watershed in an extended drought. The fact is, we don't know, but we can know much more. We have unused relevant data.
- If the cannabis grower's business revenue forecast is based on 20+ acres and 26 acre-feet of water, the business reality is that Nojoqui Farms will pump 26 acre-feet from all available sources (metered AND unmetered wells) to meet their revenue objectives.

# Whose Jurisdiction Is It?

1. State Water Resources Control Board (SWRCB)?
2. California Fish & Wildlife (CDFW)?
3. County of Santa Barbara?
4. Private Parties (i.e., Future Lawsuits)?

“...The purpose of the Policy is to ensure that cannabis cultivation does not have a negative impact on water...” (SWRC Cal. Code Regs. Tit. 23, § 2925 )

“... CDFW does not have comments at this time...” (Staff Report Page 6)

“... However, the Lake and Streambed Alteration (CDFW’s LSA) process is a separate process outside of the County’s jurisdiction...” (Staff Report Page 7)

“...Nevertheless, any dispute regarding overlying water rights is a private matter and not under the jurisdiction of the County...” (Staff Report Page 8)

# Two Currencies Should be Weighed in Every Rural Land Use Decision:

1. Money
2. Ecosystem

The PEIR for cannabis in the Nojoqui Creek Watershed is deficient in weighting our fragile ecosystem currency

# SUMMARY:

1. There was bias in the planning commission appeal because the **only** Professional Geologist providing advise to staff was and is a prominent paid cannabis industry consultant.
2. The water source for the Nojoqui Farms metered main well is surface water, recharged by annual rainfall, the other two wells may or may not be. **We don't know because we haven't assessed it.**
3. Because it is surface water, it is literally against state law for cannabis growers to pump surface water between April 1 and October 31. We don't know when this law will be enforced, if ever, but we are in a stage 2 drought. 8 of the last 10 years of rainfall have been below average.
4. 10 years of water usage is not historical water usage in rural areas like ours. A truer indication of historical land and water use would be 20 - 30 years or more.
5. 26 acre-feet per year might be **too much for Nojoqui Farms to pump and still maintain the health of the watershed. We don't know because we haven't assessed it.**
6. The PEIR for cannabis in the Nojoqui Creek Watershed is deficient in weighting our fragile ecosystem currency against money currency.

**We need to give more weight to the environment in this process.**

# An Opportunity to Learn

- Small Watershed
- Rainfall History Back to 1954
- Measurable Well Usage Of The Biggest User
- Willing Neighbors
- An Easily Observable Ecosystem