



February 10, 2022

**Re: 2022 Fallowing Policy for Cannabis Farms**

Dear Director Elliott,

On behalf of Origins Council, representing nearly 900 licensed small and independent cannabis businesses in six counties throughout California, we are writing to you today to underline the urgency of the establishment of a DCC fallowing policy for 2022, and to request that the state consider emergency regulatory promulgation or an executive order to accomplish this goal.

We appreciate the DCC's openness over the past several months to considering such a policy for farmers who wish to temporarily cut back on some or all of their licensed production.

In other sectors of agriculture, farmers commonly adjust their production in response to market and environmental conditions. Under current state regulatory procedures, however, fallowing is not available as an option to cannabis farmers. Current procedures require cannabis farmers to either renew their state license each year and pay an annual licensing fee, or to forfeit their license and reapply from square one at a future date.

Since originally raising this issue with the DCC in September, we have continued to hear an outpouring of interest in fallowing from our membership. Interest in fallowing stems from a number of factors, including adjusting production to market conditions, responding to local drought conditions, adapting to impacts from wildfires, and responding to challenges associated with CEQA compliance and environmental review.

Just earlier this week, an advisory on the potential implications of fallowing was printed in the primary local news source for the Emerald Triangle, demonstrating the depth of interest in this

issue.<sup>1</sup> Establishing a statewide fallowing policy has also been a priority for county governments which have established their own, local fallowing policies for cannabis cultivators.<sup>2</sup>

As we write this letter, farmers are currently making extraordinarily difficult decisions on whether or not to plant for 2022. If a fallowing policy is not established on an emergency basis for 2022, those farmers who choose not to, or are unable to plant in 2022 risk permanently losing their ability to operate within the legal market. Other farmers will be pressured into growing for a 2022 season where it may not be financially or practically viable for them to do so. In turn, these farmers will risk financial consequences that will make it more difficult to remain within the legal market over the long term.

Many years of work by legacy cannabis farmers to comply with state and local regulation, including substantial environmental improvements required for compliance, will be lost if these farmers do not have the option to voluntarily cut back their production. Providing a fallowing pathway will also ensure that provisional cultivation licensees remain eligible for cannabis grant funding to support forward progress on their Lake and Streambed Alteration Agreements and CEQA compliance, which protects the environment and the considerable investments these operators have put into their businesses.

We understand that the primary barrier to establishing a fallowing policy for the 2022 growing season is the ability to substantiate emergency regulations to implement this policy in a timely manner. With this in mind, we would like to highlight the persistence of drought conditions which we believe justify the establishment of these regulations on an emergency basis.

On October 19, 2021, Governor Newsom issued a drought declaration emphasizing the importance of preparing for "multi year droughts" and stating that "the most impactful action Californians can take to extend available supplies is to redouble their efforts to voluntarily reduce their water use." The declaration also directs local water supplies to "[execute] agricultural Drought Plans at a level appropriate to local conditions that takes into account the possibility of a third consecutive dry year" and directs CDFA to "evaluate water efficiency measures implemented in California agriculture."

The Governor's emergency drought declaration emphasizes both the need for an emergency response to current drought conditions, and a precautionary approach that acknowledges the risk of continued drought in the future.

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<sup>1</sup>

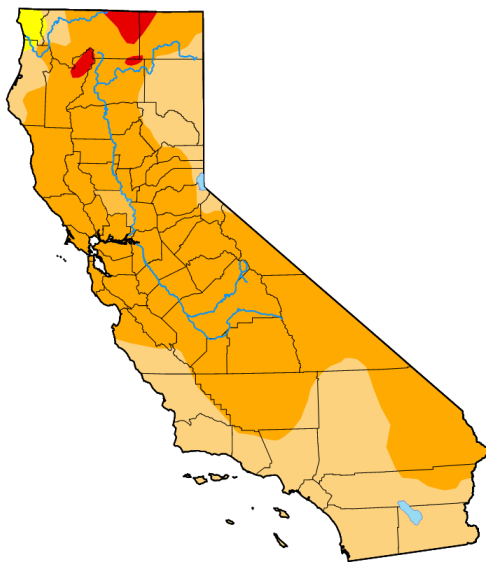
<https://kymkemp.com/2022/02/09/taking-a-year-off-the-farm-as-prices-drop-some-cannabis-cultivators-are-putting-a-pause-on-growing-heres-what-you-need-to-know/>

<sup>2</sup>

<https://www.times-standard.com/2021/10/06/humboldt-county-supervisors-extend-cannabis-tax-payment-deadlines/>

This December, much of the state saw substantial precipitation, suggesting the possibility for a respite from last year’s severe drought.<sup>3</sup> While this may have appeared to weaken the case for a drought-based emergency declaration for following, we ask that this determination be reassessed in light of California’s extremely dry January, and pessimistic outlook for February.

- On February 3, 2022, the U.S. drought monitor<sup>4</sup> reported “severe drought” in most California regions with significant levels of cannabis cultivation.



**Map released: Thurs. February 3, 2022**

Data valid: February 1, 2022 at 7 a.m. EST

**Intensity**

- None
- D0 (Abnormally Dry)
- D1 (Moderate Drought)
- D2 (Severe Drought)
- D3 (Extreme Drought)
- D4 (Exceptional Drought)
- No Data

**Authors**

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**Curtis Riganti**, National Drought Mitigation Center  
 Pacific Islands and Virgin Islands Author(s):  
**Richard Tinker**, NOAA/NWS/NCEP/CPC

- On February 7, 2022, California Attorney General Rob Bonta wrote to the Biden administration: *“After a bone-dry January, California appears unlikely to escape yet another devastating drought. These conditions are only going to worsen as the impacts of climate change grow increasingly severe.”*<sup>5</sup>
- On February 8, the San Francisco Chronicle<sup>6</sup> cited David Rizzardo, hydrology section manager for the California Department of Water Resources, on the prospects for a continued severe drought in 2022:

*“...current water storage amounts are well below the historical averages for this time of year. For example, the average storage level for Feb. 7 is usually 65% of capacity for Trinity Dam, but currently it’s at only 31%. Lake Shasta and Mendocino are also well*

<sup>3</sup>

<https://www.latimes.com/california/story/2021-12-31/powerful-storm-pounds-california-after-year-of-drought>

<sup>4</sup> <https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?CA>

<sup>5</sup>

<https://oag.ca.gov/news/press-releases/west-continues-confront-devastating-drought-attorney-general-bonta-urges-epa>

<sup>6</sup> <https://www.sfchronicle.com/climate/article/Charts-show-where-California-reservoir-totals-16840166.php>

*below average right now. Hetch Hetchy is the only reservoir above its average storage of 63%, and is currently 82% full.*

*After record snowfall in December led to an incredibly dry January, there are renewed concerns of drought. And early forecasts show the rest of the wet season is not likely to produce enough precipitation. While it may seem that December's production could get us through the rest of the season, Rizzardo explains that "in hydrology, you need consistent water shed to keep soils happy." He fears that without more precipitation this season, we'll enter our third very dry year.*

*"It certainly looks dry at least until the last week in February," he said. "The worst possible scenario is it just remains completely dry. We've been at zero now for several weeks, and we really want to see that turn around."*

Given our dry January and February, we fear a worst-case scenario where December rains deter the state from adopting emergency fallowing regulations, and yet dry conditions over the following months leave farmers without access to a fallowing option while severe drought conditions persist into 2022.

For these reasons, and in light of the high potential for continued drought conditions, we request that the DCC reassess the potential for emergency regulations to enable fallowing in 2022.

If this cannot be accomplished, we request executive action, such as an executive order, to enable cannabis farmers to fallow. We believe that such an executive order would be consistent with other such emergency orders included in Governor Newsom's October 19 drought declaration.

Below, we have reprinted our October 21 proposal for the specifics of a fallowing policy.

## **October 21 Origins Council Proposal for Fallowing Logistics**

October 21, 2021

Dear DCC Staff,

We are writing to follow up on the potential for a statewide fallowing process for licensed cannabis cultivators. We greatly appreciate the DCC's consideration of this issue, and wanted to provide further thoughts on details for what the practical implementation of a fallowing policy might look like.

From the perspective of licensed cultivators in legacy producing regions, we view the following considerations as important to ensure that a fallowing program is usable for a range of cultivators who may find themselves in different situations:

- A fallowing program should enable and encourage cultivators who hold provisional licenses to continue pursuing requirements for annual licensure, including maintaining eligibility for grant programs.
- A fallowing program should allow cultivators with fallowed licenses to conduct post-harvest activities from their previous year's harvest, including storage, processing, METRC sales, and maintenance of immature plants (but not cultivation of mature plants).
- A fallowing program should provide an equitable pathway for cultivators whose license renews mid-season (e.g. July) and who have already paid annual licensing fees for portions of the 2022 growing season.
- A fallowing program should provide an equitable pathway for cultivators who were not able to renew their licenses in Fall 2021, but who would have taken advantage of a fallowing option if it were available at the time of license renewal.
- A fallowing program should consider the implications of new statutory restrictions on provisional licensure (AB/SB 160) for the ability to fallow and/or re-activate a license.

Below, we attempt to integrate these considerations into a proposal for a fallowing process that we hope may be workable for both the DCC and for licensed cultivators.

### **1. Summary of Proposed Fallowing Process: Type F License**

We propose that a cultivator may submit a "cultivation fallowing request" for the 2022 growing season for one or more cultivation licenses prior to May 15, 2022.

Upon approval of the request, the cultivator is issued a Type F ("fallowing") license type, and their original license is rendered inactive. The Type F authorizes cannabis storage, processing,

immature plants, and METRC transfers, but does not authorize cultivation of mature plants. The cultivator pays a small licensing fee to cover these costs, plus IT and inspection costs.

Between January 1 and May 15, 2023, the cultivator may then choose to either reactivate their original license, or continue to fallow in 2023.

If the cultivator chooses to reactivate their license for 2023, their licensing fee is discounted proportionally based on the date they were issued a Type F license, given that they have already paid a licensing fee for parts of the 2022 growing season that they did not utilize. For example, if a cultivation license was renewed on July 1, 2021, and a cultivator was issued a Type F January 1, 2022, their licensing fee upon reactivation in 2023 would be 50% of the normal cost.

On a yearly basis, all Type F requests must be submitted between January 1 and May 15.

## **2. Alternative Potential Fallowing Process: Fee Waivers**

Alternatively, the DCC could consider allowing cultivators to maintain an active cultivation license, but add a further restriction to this license that prohibits the cultivation of mature plants. This would be accompanied by a waiver of the bulk of state licensing fees. If this process can be administratively accomplished, it would accomplish similar goals to #1 above - restriction mature plant cultivation while allowing cultivators to continue to store, process, and sell cannabis - while not requiring the creation of a new license type.

## **3. Additional Potential Fallowing Process: Cultivators with a Single License**

Many cultivators have a single license - for example, for 10,000 square feet - and may want to decrease to a smaller license size, such as 5,000 square feet.

To accommodate this, we propose that the cultivation fallowing request form include an option to reduce cultivation size. This would function similarly to the above mechanism, except that it would allow a cultivator to exchange their existing license for a smaller license of the same type without submitting a fully new license application.

Cultivators would maintain the ability to re-expand to the full license size in future years, and cultivators who already paid fees for a larger license type in Summer/Fall 2021 would receive a proportional licensing fee discount for 2023.

Cultivation reduction would also need to be requested between January 1 and May 15 of each year.

## **4. Final Consideration: Cultivators with License Expirations Prior to Implementation of Fallowing Program**

Because a fallowing program does not currently exist, some cultivators who may wish to fallow - but have a license renewal due in Fall 2021 - may choose not to renew their license. If a fallowing option is implemented, these cultivators should be able to reactivate their license beginning in 2023.

We propose, on a one-time basis, that a cultivation license which was not renewed after October 1, 2021 - but before the implementation of a DCC fallowing program - may be reactivated between January 1 and May 15, 2023. However, we understand that there may be complications in this process specifically for provisional license holders due to new restrictions on the issuance of provisional licenses in SB 160/AB 160.

Thank you for your consideration of these important issues, and we look forward to working with you on these issues going forward.