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**Comment CASE Report Indoor and Greenhouse Cultivation**

*Additional submitted attachment is included below.*



## **CANNABIS CULTIVATION AND CALIFORNIA'S ENERGY GOALS A WHITE PAPER DISCUSSING THE:**

2022-NR-COV-PROC4-D | Covered Processes | June 2020 DRAFT CASE REPORT Prepared by Energy Solutions and Cultivate Energy and Optimization and relating to: Statewide Codes and Standards Enhancement (CASE) Initiative; California Statewide Utility Codes and Standards Team; Codes and Standards Enhancements; 2022 California Energy Code; 2022 Title 24, Part 6; efficiency; horticultural lighting; dehumidification; greenhouse envelope.

Docket No. 19-BSTD-03

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## **Introduction**

The authors of the CASE report were so hobbled by pre-existing constraints that it cannot be said that the resulting report could have been much different than it is.

Constraints imposed upon the authors were:

1. Energy goals unworkable for cannabis cultivation had already been established during Governor Brown's tenure.<sup>1</sup>
2. The report's emphasis on LED lighting is simply because, as the report points out, nothing else is available which would meet government energy goals.

Our organization would like to be clear about the fact that we are not, in any way, seeking to denigrate the efforts of the report's authors. Rather, we are seeking energy solutions for a new California industry, commercial cannabis cultivation.

To do this, we must explore the effects this report would have on that industry and bring forward solutions which would be equitable but still facilitate the State's energy and water usage goals.

Many California residents rely on cannabis for pain and symptom relief<sup>2</sup>. Unworkable energy solutions could seriously disrupt safe access to medical cannabis and should be a primary consideration in any energy usage scheme.

You cannot designate the cannabis industry as "essential" during a global pandemic then create energy policies that are an extinction event for the cannabis cultivation licensee due to pre-existing burdens. It should be noted, once again, that the authors did not create this situation, they are grappling with existing law.

Should those commissioning the report follow the suggestions outlined below, a more realistic and workable energy blueprint for the cannabis cultivation community will be the result.

### **Cannabis Cultivators May Not Have Participated in CASE Outreach in Sufficient Numbers.**

Page 42 of the report indicates that the authors interviewed 19 growers but does not state whether these growers grew cannabis and does not specify if they were greenhouse or indoor growers. Appendix F mentions phone and on-line surveys with growers but does not specify what type of products they grew or whether they were indoor or greenhouse growers. Page 132 of the report mentions sending email surveys to "responsible parties" listed on the CalCannabis website but does not discuss how many responded.

Efforts by the authors to engage California cannabis cultivation advocacy groups appeared to be limited to outreach to the National Cannabis Industry Association, which is involved in effecting changes in national law and is not specifically an advocacy organization for cannabis cultivators. In contrast, almost every California county which has cannabis cultivation has an advocacy group which represents local cannabis growers. Here is just a partial list of organizations existent from the middle of the state to the Mexican border:

Antelope Valley Cannabis Association  
Cannabis Association for Responsible Producers (CARP)  
Coachella Valley Cannabis Alliance Network  
High Valley Growers Association  
Lompoc Valley Cannabis Association  
Monterey County Cannabis Industry Association  
San Luis Obispo County Cannabis Business Association



Oakland Cannabis Business Council  
The Southern California Coalition

Cannabis cultivators are used to dealing with the regulatory agency that controls their licensure, CalCannabis. Most of them subscribe to the CalCannabis interested parties email list. In examining the list of interested parties that is part of the report there appears to be only one cannabis advocacy group listed (NCIA ) and CalCannabis is nowhere listed as anything but a provider of email addresses. Had the authors been able to partner with CalCannabis more meaningfully the input of cannabis cultivators might have been easier to obtain and given the authors a more complete picture of the difficulties their proposals present.

It's quite likely that the authors failed to provide the protections that California cannabis cultivators need to be transparent and this discouraged meaningful interaction. For instance, government agencies can request information from each other without a warrant requirement.

This means that all the raw data submitted to the authors and ultimately the property of those commissioning the report, could go into the hands of federal law enforcement by submitting a mere request and absent a court issued warrant. In addition to this, federal subpoenas relating to cannabis seem to be increasing .<sup>3</sup>

Had the authors been able to reassure licensed California cultivators that their information would not end up in the hands of federal law enforcement they might have been better able to gage the effect their suggestions would have on cannabis farmers.

If we are correct in our assumption that added participation by cannabis cultivators would be helpful our organization suggests:

A working group of indoor and greenhouse cannabis growers be established and that this group confer on at least six occasions with the authors to educate them on:

- The effects state mandated energy goals would have on farmers.
- Why lighting other than LED Lighting is commonly used in cannabis cultivation.
- How federal prohibition affects the industry's ability to conform to state standards.
- What would be needed in terms of incentives, fee waivers, low interest loans, etc. for cannabis cultivators to meet proposed state energy regulations.

It's important to note, that while government issued studies on the efficacy of LED lighting for cannabis are pretty much non-existent, all over California licensed cultivators have been devoting a part of their growing space to on-going experiments with LED lighting.

Sitting down with these cultivators would give the report's authors a much better sense of how effective LED lighting is and what problems its usage presents. Absent government studies, the authors would have to rely on the testimony of those who sell, install or manufacture LED lighting. Or worse yet, assume that government mandated energy reductions compel LED lighting though cultivators may consider it an unperfected technology which they are wary about investing in.

To encourage participation, farmers should receive strong assurances that their contributions will not be shared with federal agencies.

Establishing a working partnership with CalCannabis going forward is also highly recommended.



### **Led Lighting May Be The Only Solution Currently Available But How Good A Solution It Actually Is Needs Further Investigation.**

Indoor and greenhouse cannabis cultivators are always looking for cost saving alternatives. Energy bills are one of the biggest expenses cultivators endure each month. If LED lights were the best method for growing cannabis, there would be no need for regulations mandating them, they would already be in widespread use.

Most licensed California cannabis cultivators began their businesses growing for the medical community, and in large part, still do. This requires that varieties<sup>4</sup> be uniform in strength and effect. Patients seeking symptom relief rely on the uniform nature of California Cannabis and have since 1996.

This incentivized growers to develop lighting and HVAC systems compatible with the needs of California patients, and over the years, growing methods indoors and in greenhouses were developed that promoted a high degree of uniformity and quality.

To achieve this high state of quality and consistency LED lighting would have to produce uniform varieties equivalent in quality and quantity to what is now produced by other means.

It would also have to be cheap enough that a farmer who has to self-fund the lighting and HVAC systems could do so. SBA loans, other federal assistance, vendor financing and bank loans are not possible as long as federal prohibition continues to exist.

The fact that the cannabis industry is meaningfully involved in providing medical cannabis for the sick and dying is unaddressed in the report and the damage that would be done to patients if state regulations resulted in a downturn in quality and potency is not discussed. Burdensome regulations should not be imposed on those whose efforts provide a profound benefit to our frailest citizens, the chronically ill and those suffering from fatal diseases.

Evidence is mounting that cannabis is effective in fighting COVID-19<sup>5</sup> and regulators should be mindful of imposing costly regulations on an industry which may be producing a pandemic-ending product.

Some concerns cultivators have voiced about LED lighting systems include:

- Decreased yield and quality concerns
- Cost
- Sourcing problems
- The inability to get vendor financing because of federal prohibition
- The inability to get bank or SBA Loans because of federal prohibition
- IRS §280e bars deductions for business expenses such as lighting systems
- Lack of reliable information about the efficacy of LED lighting<sup>6</sup>
- Lost profits if the LED set-up proved to be unworkable.
- The inability to reflect business losses on federal tax returns
- Insufficient scientific data on the long-term effects on one's health when working with LED lighting.<sup>7</sup>

### **Illegal Cultivation is Prevalent and Problematic.**

One of the most important areas unaddressed by the authors is the prevalence of illegal grows. In one sweep alone, officials found indoor cultivation in nearly one hundred private homes.<sup>8</sup> Unlicensed grows are so numerous that it is estimated this illicit California cultivation market is as large as the licensed market<sup>9</sup>.



Imposing expensive lighting and HVAC requirements on licensed cultivators is not going to do anything to reduce illegal energy and water usage. Because illegal grows are so prevalent shutting them down would reduce water and electrical usage by such a significant amount that it might not be necessary to impose burdensome regulations on licensed cultivators.

Pending legislation, AB 2122 (Rubio) would allow recoupment for enforcement costs<sup>10</sup>. Before imposing burdensome regulations on legal actors, regulators should shut down the illicit market. Without this crucial step, forcing legal actors to bear additional costs may well be an extinction event for many cultivators.

The cost differential between legally producing cannabis and illegally growing cannabis is substantial. Illicit operators don't obey regulations and won't follow the regulations proposed in the report. They pay no taxes, nor do they have to endure expensive testing.

If energy regulations make the playing field even more uneven than it currently is, it will simply increase the costs to the consumer, driving customers to the illicit market in even greater numbers (illegal retailers already exist in a 3:1 ratio to licensed shops<sup>11</sup>) and reducing the licensee's market share to the point where the business cannot survive.

Already, competition from the illicit market has created a "race to the bottom" depressing the wholesale prices for licensed cultivators. Layering on expensive regulations may be the killing blow.

The disappearance of licensed operators from the marketplace means taxes also disappear. Currently, licensed cultivators account for about 80 million dollars a year in state taxes. Should the illegal market be eradicated, that figure might more than double.

Legal actors should be rewarded with incentives and other mechanisms which will help them meet the state's energy goals, while still remaining a viable business entity. Our organization would like to see the report amended to include a discussion of the illegal market and a recommendation for a suite of programs designed to help legal actors meet the state's energy and water usage goals. Such programs might include:

- Credits awarded for reducing water usage which could be used to offset energy usage.
- Credits awarded for reducing energy usage which could be used to offset water usage.
- Credits awarded to social equity licensees.
- Extensions for compliance when the licensee can prove an act of God materially disrupted the business.
- Extensions and credits to allow for an "adjustment period" if newly installed LED systems proved to be problematic.
- Carbon credits for those growing for the medical market or compassion programs.
- A release from compliance when a CEQA report indicated no negative effect on the environment was ascertained.
- Low interest loans, fee waivers, incentives and other economic programs designed to offset the expense of buying and installing new equipment.
- A program of awards and grants for those wishing to develop power and water usage solutions.
- A release from compliance for those who use alternative energy sources such as wind, or solar power or who draw from an energy grid which uses alternative energy sources.
- Credits or a release from compliance for those who make a meaningful economic contribution to the enlargement of a jurisdiction's energy grid.



## CEQA

Licensed cultivators in California are subject to the California Environmental Quality Act (CEQA) and must prove that their business is not detrimental to the environment. This is a detailed and expensive process.

Once it is finished and a determination has been reached that the business has no negative effect on the environment where it is situated, the State of California should not impose additional energy or water usage requirements upon the business.

The CEQA review will have already demonstrated that the business is not part of the problem and should not be burdened with a separate set of expensive and unnecessary water and power demands.

The Southern California Coalition would like the report expanded to discuss CEQA as well as explore ways to reward businesses who are already behaving so responsibly they have passed their CEQA review.

## Summary

Cannabis cultivation suffers from unique problems which no other indoor or greenhouse horticultural operation is subject to including:

- Federal prohibition
- High tax rates
- Intense competition from illegal actors
- Detailed and expensive regulations

If the State of California wishes to truly effectuate energy and water usage that is workable and fair, it needs to acknowledge that cannabis cultivators and their challenges require that the State work with cultivators to find solutions and mitigate problems, rather than inflicting a "one size fits all" demand for energy and water reduction.

Particularly crucial is the elimination of illegal actors. As demonstrated above, meaningful enforcement would greatly reduce water and energy usage and repair the currently burdened cannabis industry by enlarging the market share of those who chose to follow the rules. This economic rehabilitation would help offset the cost of new regulations.

Our organization suggests that a beginning step in this process, would be to have the authors of the report engage cannabis cultivators in a meaningful dialog and then produce a revised report.

Additionally, unforeseen developments between 2018 and the present time argue for an updated report. Among other things, a worldwide pandemic is decimating the economy which in turn will meaningfully affect the ability of cannabis farmers to maintain their businesses or take on new economic burdens.

Forecasting in the report drawn from estimates compiled by Frontier and BDS several years ago, may now be materially different and should be reexamined in light of recent developments.

Our organization recognizes the challenges the authors of the report faced and look forward to working with them to develop solutions which are workable for the cannabis industry.



## ENDNOTES

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<sup>1</sup> Governor Brown signed an ambitious energy plan into law in 2018. This means that the research and planning that went into this sweeping legislation would have been done in the years prior to 2018, a time when the statutory framework for cannabis cultivation licensure was being developed. As such, cannabis cultivation was making the transition from the non-profit patient provider construct mandated by Brown's 2008 Attorney General Guidelines to an industry so nascent that its energy needs could not be assessed because its size was undetermined.

<sup>2</sup> The Compassionate Use Act was passed in 1996 and allowed Californians to access cannabis for therapeutic purposes.

<sup>3</sup> See: <https://www.cnn.com/2020/06/23/politics/elias-testimony-barr-cannabis-trump-automobile-california/index.html> and <https://www.forbes.com/sites/jackbrewster/2020/06/24/barrs-personal-animus-towards-marijuana-prompted-cannabis-industry-probes-doj-whistleblower-says/#9b4c53a54324> and <https://harrisbricken.com/cannalawblog/the-weedmaps-subpoena-has-the-feds-interest-in-the-cannabis-industry-really-shifted/>

<sup>4</sup> This is just the newly minted term for marijuana strains in California law.

<sup>5</sup> See: <https://www.forbes.com/sites/emilyearlenbaugh/2020/07/06/cannabis-may-reduce-deadly-covid-19-lung-inflammation-researchers-explain-why/#730f45454d9d>

<sup>6</sup> For instance: cultivators are wary of the boasts and representations made in grower forums as they appear to be thinly veiled attempts by salespeople to anonymously tout their products. Typically, these forum posts will claim yields that cultivators know are not possible with LED lighting.

<sup>7</sup> "The study from Barcelona Institute for Global Health (ISGlobal) and involving the University of Exeter found that participants living in large cities with heavy exposure to LED lighting at night had double the risk of prostate cancer and 1.5 times higher risk of breast cancer. This was compared to populations with less exposure to blue light." See: <https://environmentjournal.online/articles/new-research-links-led-lighting-to-cancer/>

<sup>8</sup> <https://www.courthousenews.com/major-marijuana-sweep-plucks-up-61000-plants/>

<sup>9</sup> "California authorities announced they seized more than \$1.5 billion worth of illegal marijuana in fiscal year 2019, or the rough equivalent of the state's legal market for cannabis." See: <https://www.npr.org/2019/11/04/776241615/california-seizes-more-than-1-5-billion-in-illegal-marijuana>

<sup>10</sup> See: [http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB2122](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2122)

<sup>11</sup> "California's black market for cannabis is at least three times the size of its regulated weed industry, according to an audit made public Wednesday, the latest indication of the state's continued struggle to tame a cannabis economy that has long operated in legal limbo." See: <https://www.latimes.com/california/story/2019-09-11/california-marijuana-black-market-dwarfs-legal-pot-industry>