



## SOUTH YUBA RIVER CITIZENS LEAGUE

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February 25, 2019

Brian Foss, Planning Director  
Planning Department  
Community Development Agency  
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Re: SCH# 2018082023 Nevada County Commercial Cannabis Cultivation Ordinance DEIR  
Comments

Dear Mr. Foss:

The South Yuba River Citizens League (SYRCL) respectfully submits comments and recommendations in response to the Draft Environmental Impact Report (DEIR) released by the County of Nevada (County) regarding the Nevada County Commercial Cannabis Ordinance (NCCO) environmental review required by the California Environmental Quality Act (CEQA). SYRCL requests that these comments be received and addressed regarding the substance and adequacy of the DEIR in compliance with CEQA.

In this letter, we provide comments on the NCCO itself, the application of the baseline for determination of environmental impacts from cannabis cultivation in the unincorporated areas of Nevada County, and the adequacy of the DEIR including the following issues:

- NCCO General Concerns and Amendments
- DEIR One Hundred Percent Parcel Utilization Assumption
- DEIR Mitigation Measures, and
- DEIR No Groundwater Cultivation Alternative

SYRCL requests that the DEIR should incorporate the following recommendations and changes in order for the Final Environmental Impact Report (FEIR) to comply with CEQA.

### **I. Introduction**

SYRCL's vision is that well-regulated agriculture should not harm water quality, fish or wildlife, and their habitat within the Yuba River watershed. Inspired by that vision, SYRCL started the "Growing Green for the Yuba" (Growing Green) program in 2015. Through Growing Green, SYRCL staff and community partners have hosted a series of public workshops that have reached nearly 500 people in the community. The workshops feature a variety of Best Management Practices (BMPs) for the Yuba River watershed, regulatory updates, and issue-specific panels on environmental concerns such as forest

management, water use and conservation, water catchment and healthy soil.<sup>1</sup> Most recently, SYRCL received funding from the Central Valley Regional Water Quality Control Board (CVRWQB) and partnered with the Nevada County Cannabis Alliance (NCCA) to produce videos featuring local farmers and BMPs for soil management and water conservation.<sup>2</sup>

The purpose of an EIR is “to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided,” before a project is approved.<sup>3</sup> The lead agency for the project must mitigate or avoid the significant effects on the environment from projects that it carries out or approves whenever feasible.<sup>4</sup> Moreover, the “purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment.”<sup>5</sup>

SYRCL applauds the County for making a good faith effort to analyze, review and mitigate the environmental impacts of cannabis cultivation through the NCCO DEIR.

Unfortunately, the DEIR does not use a rational assumption of parcel utilization to analyze the environmental impacts from personal and commercial cannabis cultivation. This results in the County offering vague or no mitigation measures for a number of environmental impacts and proposing infeasible project alternatives that would increase negative environmental impacts to the Yuba River watershed. Accordingly, SYRCL recommends the County examine the comments below to amend the DEIR and the NCCO in order to satisfy the legal thresholds under CEQA and protect the Yuba River watershed. Specifically, the DEIR comments focus on proposed mitigation measures that encourage best management practices, and suggest specific ordinance amendments for the County to consider when preparing the FEIR and final NCCO for approval. These are substantive and substantial changes, which may require the County to recirculate the DEIR before issuing the FEIR and approval of the final NCCO.

Overall, SYRCL is concerned that if the County does not include a more reasonable assumption of parcel utilization and incorporate the following recommendations, the NCCO DEIR will not meet the legal thresholds required under CEQA.

## **II. The NCCO discourages legal cultivation, perpetuating known environmental impacts from illegal cultivation.**

SYRCL’s overarching concern is that the present version of the ordinance does not encourage legal cannabis cultivation and will result in the continuation of illegal, unregulated cannabis cultivation. Without effective implementation of the NCCO and community consensus, this DEIR will not be an accurate determination of the extent of environmental damage in the Yuba River watershed caused by continued illegal cannabis cultivation.

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<sup>1</sup> Video recordings of those public workshops are available on SYRCL’s website.

<sup>2</sup> The video recordings are available on SYRCL’s website.

<sup>3</sup> Cal. Pub. Res. Code § 21000 et seq., at 21002.1(a).

<sup>4</sup> *Id.* at 21002.1(b).

<sup>5</sup> Cal. Code Regs. tit. 14, § 15201 (“CEQA Guidelines”).

As currently drafted, the NCCO encourages indoor commercial cannabis cultivation due to certain outdoor cultivation zoning bans, specifically in the Residential Agricultural zone (RA). Though SYRCL applauds the County's intent to limit commercial cannabis cultivation to reduce environmental impacts, this overly restrictive ban incentivizes illegal cannabis cultivation to continue with well known negative environmental impacts. The NCCO must encourage appropriately located small scale legal outdoor cultivation with the available mitigation measures listed in the DEIR and these comments.

SYRCL recommends the County incorporate the following proposed amendments in the NCCO in order to meet the requirements of CEQA, increase the effectiveness of environmental mitigation and encourage more cannabis cultivators to come into compliance with this ordinance and state regulations.<sup>6</sup>

The first suggested amendment is for the NCCO to regulate outdoor cultivation in residential areas. The NCCO as currently drafted bans any outdoor or mixed light personal use cultivation in the parcels zoned residential or RA. SYRCL encourages the County to include environmental analysis of those existing grows as part of the FEIR and amend the NCCO to reflect existing cultivation in order to regulate it and protect the Yuba River watershed.

Second, SYRCL encourages the County to incorporate specific BMPs into the NCCO to provide guidance for cannabis cultivators when implementing land management plans to mitigate water quality and soil and erosion environmental impacts, as required by the NCCO. Practices such as integrated pest management, soil building with compost, and encouraging consistent testing of soil health to conserve water are all measures that could assist in effective implementation of land management plans as environmental mitigation for cannabis cultivation in Nevada County.<sup>7</sup>

Third, SYRCL recommends the County include in the "Findings and Purpose" section of the NCCO a tribute to the organic cultivation heritage of Nevada County, and the economically important specialty medical cannabis cultivation market.

Additionally, the NCCO as currently drafted does not encourage or support the small farm cultivation that is well known in this region.<sup>8</sup> SYRCL strongly encourages the County to change certain zoning and acreage limitations in order to promote transparency, disclosure and effective regulation of the existing cannabis cultivation in this community.

Finally, we suggest an amendment that would allow for medical cannabis cultivation to be given priority for approved local permits under the ordinance due to the health urgency and community service this particular product provides. This language would make the ordinance consistent with the state legislative intent articulated in MAUCRSA and Proposition 64 and provide additional incentive for legalization.

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<sup>6</sup> See § 21081.6 (b) "Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, *by incorporating the mitigation measures into the plan, policy, regulation, or project design*" (emphasis added).

<sup>7</sup> The video recordings are available on SYRCL's website.

<sup>8</sup> Specifically, the ordinance restricts personal outdoor cultivation in the Residential Agricultural zone, which is a hybrid zoning classification in Nevada County that accounts for many small, individual cannabis cultivators in this community. By not including them in this ordinance, many cultivators either must shut down operations or continue to cultivate illegally.

### **III. The DEIR does not use a reasonable assumption for parcel utilization under the NCCO, and therefore does not adequately mitigate the environmental impacts of cannabis cultivation.**

The “environmental baseline” condition is the foundation of an environmental impact report and provides the base assumption for all environmental impacts for the project.<sup>9</sup> Here, the County DEIR assumes that environmental baseline conditions began on August 10, 2018, the day the Notice of Preparation (NOP) was issued, and that there was 3,500 existing cannabis grows.

From that date, the DEIR then assumes *one hundred percent* of all eligible parcels under the NCCO will be utilized for cannabis cultivation, totaling 27,207 legal grows in Nevada County. While SYRCL appreciates the County analyzing their definition of the “worst case scenario,” it is also necessary to accurately analyze a realistic estimation of environmental impacts in order for the County and the NCCO to appropriately mitigate environmental impacts.<sup>10</sup>

#### **A. The DEIR should analyze a more reasonable parcel utilization assumption other than one hundred percent in order to develop and implement all feasible mitigation measures as required under CEQA.**

SYRCL urges the County to utilize existing data on current parcel utilization to analyze a more reasonable application of NCCO implementation rather than assuming one hundred percent for all environmental impacts.

If we move forward with the assumption that all 3,500 grows are outdoors and all commercial, we can apply actual data based on current conditions to identify how many parcels might be utilized when the NCCO is implemented. For example, SYRCL estimates that nearly twenty percent of current commercial grows would continue to be illegal based on the NCCO due to parcel size and zoning.<sup>11</sup> The NCCO would also make outdoor grows illegal on 2-5 acre parcels, leading to an additional 15% of current commercial grows staying illegal.<sup>12</sup> The remaining approximately 2,275 grows, that can potentially be legal could then move through an analysis of environmental impacts to see if this level of utilization is feasible with just existing grows becoming legal under the NCCO as written.

Additionally, the County could examine energy use, a “significant and unavoidable” environmental impact in the NCCO DEIR. Let us estimate that current grows are evenly divided among parcel size categories allowed under the NCCO. A stipulation of the NCCO that will likely lead to increased energy demand is the indoor grow only requirement for parcels 2-5 acres in size. A third of the 2,275 grows calculated above is approximately 680 grows that would require additional energy demand of

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<sup>9</sup> Cal. Code Regs. tit. 14, § 15125 (a). Authority cited: Sections 21083, 21083.05, Public Resources Code; Reference: Sections 21060.5, 21061, and 21100, Public Resources Code; *E.P.I.C. v. County of El Dorado* (1982) 131 Cal.App.3d 350; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307 (emphasis added).

<sup>10</sup> DEIR p. 3-32, 4.3-24, 4.3-31, 4.15-26, and 4.17-13.

<sup>11</sup> Those parcels with grows removed based on zone and parcel size: 3,257 parcels subtracting 2,592 leaves 662 eligible parcels remaining.

<sup>12</sup> Approximately 558 out of the 3,500 parcels.

3,966,440 KWh/yr from outdoor grows being moved indoors.<sup>13</sup> This provides a reasonable method to calculate an estimate of how utilization under the NCCO might impact energy use just from the baseline of existing grows.

<b>Parcel size</b>	<b>Current estimated number of outdoor grows</b>	<b>Estimated energy use (KWh/y)</b>
<b>2 -5 acres (rate:5,833 KWh/year)</b>	<b>558</b>	<b>3,254,814</b>
<b>5 - 10 acres</b>	<b>788</b>	
<b>Indoor (rate: 16,667 KWh/year)</b>	<b>263</b>	<b>4,383,421</b>
<b>Mixed (rate: 8,333 KWh/year)</b>	<b>263</b>	<b>2,191,579</b>
<b>Outdoor</b>	<b>263</b>	<b>0</b>
<b>10 – 20 acres</b>	<b>608</b>	
<b>Mixed (rate: 16,666 KWh/year)</b>	<b>406</b>	<b>6,766,396</b>
<b>Outdoor</b>	<b>203</b>	<b>0</b>
<b>&gt; 20 acres</b>	<b>636</b>	
<b>Mixed (rate: 33,333 KWh/year)</b>	<b>424</b>	<b>14,133,192</b>
<b>Outdoor</b>	<b>212</b>	<b>0</b>

*Simplified version of DEIR Table 4.1703: Energy Use Based on Parcel Acreages<sup>14</sup>*

SYRCL recommends the County and consultants collect additional spatial data and take into consideration all NCCO requirements in order to calculate a more reasonable assumption for utilization, in addition to the complete hundred percent utilization assumption. This will determine the accurate number of eligible parcels for cultivation, produce an accurate assessment of environmental impacts, and assist the County in formulating and implementing all feasible mitigation measures. The legislative intent behind CEQA was to emphasize *feasible* mitigation measures.<sup>15</sup> By using a more reasonable utilization assumption, the suggested mitigation measures will be more feasible for the County and our community.

<sup>13</sup> With calculations from table above and actual numbers: 5,833kwh/yr x 558 legal parcels with existing grows equals 3,254,814 KWh/yr.

<sup>14</sup> DEIR p. 4.17-12.

<sup>15</sup> See § 21003 (c).

SYRCL also encourages the County to consider conducting a tiered environmental impact report to account for additional utilization of the NCCO in the coming months and years.<sup>16</sup> This will allow the County flexibility in providing a more reasonable fundamental utilization assumption to analyze environmental impacts, and also provide regulatory flexibility that will still protect our communities and the Yuba River watershed as the regulatory setting locally, statewide and federally evolves.

**B. The DEIR also does not fully address the impacts of cannabis cultivation because it does not accurately depict the number of eligible parcels as a result of the NCCO.**

In addition to the unreasonable hundred percent utilization of the NCCO, the DEIR only takes into account two factors when calculating the number of eligible parcels: parcel size and county zoning classification.

The DEIR states that there are 27,207 parcels that have the potential to be cultivated under the NCCO based on parcel size and zoning. However, the current NCCO has stipulations in addition to parcel size and zoning that are not accounted for in the eligible parcel number and would likely further limit the number of eligible parcels. These include a number of setback requirements such as general setbacks and sensitive site setbacks.<sup>17</sup> In fact, the DEIR references the setback requirement as a way the NCCO will likely reduce the 27,207 parcel number used for impact calculations, but does not attempt to quantify how many that would be or why the County did not attempt to quantify that reduction in eligible properties: “4.13-27: *Lastly, due to certain environmental constraints, irregularly shaped parcels, required setbacks from sensitive sites, etc., not every parcel zoned for cultivation would be permitted to cultivate.*”<sup>18</sup> The ability to do a large-scale analysis of parcel width and length exists in a number of different computer analysis programs such as ArcGIS, QGIS and R and would provide a more accurate estimate of how many parcels would meet setback criteria for a more reasonable analysis of NCCO impacts.

Additionally, cultivation is prohibited in 100-year floodplain areas and on “any parcel or premises within the unincorporated territory of Nevada County *except* parcels or premises with a *legally established residence.*”<sup>19</sup> Spatial data for the 100-year floodplain is readily available and it would cull additional potential properties for cultivation from the NCCO FEIR determination of eligible properties.

SYRCL again recommends the County and consultants collect additional spatial data and take into consideration all regulatory requirements in order to calculate a more reasonable and accurate assumption for utilization under the NCCO, rather than the one hundred percent utilization assumption.

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<sup>16</sup> § 21094 (a)(1) “If a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered environmental impact report.”

<sup>17</sup> DEIR p. 4.13-28.

<sup>18</sup> *Id.*

<sup>19</sup> DEIR p. 3-37.

**C. The one hundred percent utilization rationale is inconsistently applied throughout the environmental impacts, as listed in Section 4 of the DEIR.**

The DEIR does not consistently apply the assumed one hundred percent utilization of the ordinance rationale to analyze environmental impacts. For example, the County does not provide adequate analysis of additional impacts of construction energy use under the NCCO one hundred percent utilization because the DEIR does not analyze development impact of putting residences on what it has deemed eligible parcels in order to actually make them eligible under the NCCO. The DEIR argues that the requirement of a residence on eligible properties under the NCCO will not lead to home construction that is directly a result of the NCCO.<sup>20</sup> However, projections from the one hundred percent utilization assumption do not take into account whether there is a home on the parcel in determining currently eligible properties. Therefore, the DEIR ignores any environmental impact and possible constraint from the resulting new homes or structures that will be created under the one hundred percent eligible parcels. Additionally, the DEIR does not calculate how much energy use will be on those parcels that become eligible once adding a residence, and underestimates other impacts such as traffic, air pollution, and housing.

Once again, SYRCL urges the County to use a correct and reasonable underlying parcel utilization assumption consistently in the FEIR in order to properly analyze environmental impacts and mitigate them, if possible, as required under CEQA.

**IV. The DEIR does not list all feasible mitigation measures for some environmental impacts as required by CEQA.**

**A. The DEIR Energy Section overstates environmental impacts and does not offer all feasible mitigation measures.**

CEQA requires the DEIR to contain mitigation measures where possible.<sup>21</sup> Additionally, environmental impact assessment and subsequent mitigation measures and alternatives must have a certain level of specificity, for their analysis is the “core” of an EIR.<sup>22</sup>

Here, the DEIR used the one hundred percent parcel utilization assumption to find that the NCCO, “would result in a substantial increase in energy demand during operations. . . Even with the reductions, energy use at project buildout would be approximately 50% of the existing Countywide use. There is no mitigation that would be feasible to reduce these impacts to less than significant. Impacts would remain significant and unavoidable.”<sup>23</sup>

The DEIR’s determination of significant and unavoidable impacts does not excuse the County from implementing all feasible mitigation measures. Additionally, the DEIR fails to consider current state law targets on energy sources for cannabis cultivation and feasible mitigation measures such as renewable onsite energy generation and storage.

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<sup>20</sup> DEIR p. 4.2-25.

<sup>21</sup> § 21002, “the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.”

<sup>22</sup> See *Banning Ranch Conservancy v. City of Newport Beach* (2017) 392 P.3d 455.

<sup>23</sup> DEIR p. 4.17-13.

For the FEIR, SYRCL requests the County consider California policy to move towards one hundred percent clean electric power by 2045 as rationale for another mitigation measure in the FEIR. The County could use this existing policy as the basis for an ordinance amendment that includes a local requirement to use a certain percentage of renewable onsite energy generation and storage such as solar, co-generation and battery systems. This local measure would mitigate long term energy use related environmental impacts to Nevada County.<sup>24</sup>

Additionally, the NCCO as currently drafted does not incentivize outdoor cultivation, even for personal use. The DEIR states that "...no electricity demands are assumed for new outdoor operations . . . to more closely represent what is anticipated to occur if the proposed NCCO is implemented."<sup>25</sup> If the NCCO incentivized additional outdoor cultivation, this would decrease environmental impacts from unnecessary energy demand.

Furthermore, SYRCL believes that mixed light cultivation is a more reasonable scenario for larger parcels. Most grows in Nevada County are outdoor or mixed, so using calculations for indoor grows on parcels where outdoor grows are legal at an equal percentage leads to erroneous data. In addition, we expect that if the County reviews the current, baseline conditions for outdoor grows they may conclude that outdoor grows do utilize electricity. The County should consider limiting indoor grows for parcel sizes greater than 5 acres in an additional Project Alternative in the FEIR. Limiting indoor grows could mitigate the "significant and unavoidable" impacts.

**B. The DEIR Hydrology and Utilities and Services sections overstate water use impacts and, therefore, fail to offer all feasible mitigation measures.**

SYRCL thanks the County for noting the environmental impacts of cannabis cultivation on water usage, in particular groundwater usage. SYRCL NOP comments state,

"excessive groundwater withdrawals can damage the unstable fractured granite groundwater reserves that lie beneath Nevada County. SYRCL believes that this review process needs to consider *and mitigate* damage caused by overpumping in a sensitive groundwater region that provides drinking and agricultural water in this community. In order to assess the most accurate and current levels of shallow groundwater storage, *the County may need to do a complete hydrogeology scan of the County's jurisdiction.*"<sup>26</sup>

Unfortunately, the necessary hydrogeology scan and resulting mitigations were never formulated for this DEIR, resulting in inaccurate water usage assumptions and associated impacts.

The DEIR used the water supply analysis in Appendix E to conclude that commercial cannabis will have a significant impact on water resources, determining the "...total water demand estimated for the commercial *and personal use* cultivation is 5,785,879,558 gallons per year (GPY), or 17,756.21-acre

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<sup>24</sup> See SB 100, De León. California Renewables Portfolio Standard Program: emissions of greenhouse gases (2018). Note that Humboldt County also implemented a renewable energy incentive as mitigation measure for energy impacts in their cannabis ordinance DEIR.

<sup>25</sup> DEIR p. 4.17-1.

<sup>26</sup> SYRCL NOP Comments, p.7 (emphasis added).

feet per year (AFY).”<sup>27</sup> The DEIR acknowledges that this estimation does not take into account different forms of irrigation or maturity of the plant for usage variances. The DEIR concludes that the NCCO will “[s]ubstantially de[p]lete groundwater supplies or interfere with ground water recharge effecting aquifer volume or groundwater table.”<sup>28</sup> These are alarmingly high numbers of water usage and may result in severe environmental impacts.

Additionally, despite the aforementioned assumptions, NCCO declares that there are existing entitlements *and water resources* for this project.<sup>29</sup> Specifically, impacts on surface water sources will be less than significant because the water rights and subsequent flow allocations that are not managed by Nevada Irrigation District (NID) are governed by the SWRCB, through Lake or Streambed Alteration Agreements (LSAA) agreements, which in turn mitigate those environmental effects.<sup>30</sup> NID also says it has enough water to supply the expected grows from the NCCO.<sup>31</sup> Essentially, the DEIR assumes existing requirements from the SWRCB and the CVRWQB will mitigate impacts on NID water supplies and the DEIR declares no mitigation is required.<sup>32</sup> While SYRCL is encouraged to know that NID has enough water entitlements and resources for the NCCO, once again SYRCL encourages the County to incentivize water conservation by incorporating BMPs into the NCCO.

The NCCO DEIR also does not list any potential mitigation measures for the “significant and unavoidable” groundwater impacts. The DEIR acknowledges that most cultivation in the western portion of Nevada County is beyond the NID service area and would rely on groundwater, which “occurs in factures of the hard rocks and between 200 and 215 feet below ground. There is little groundwater found to occur in the alluvium and colluvium of the area.”<sup>33</sup> However, the DEIR asserts that “overall groundwater extraction is vague” due to lack of hydrogeological mapping on Nevada County.<sup>34</sup>

The DEIR then goes on to note that there are limited regulations for groundwater in the County and does not list any sort of mitigation measures for the environmental impact.<sup>35</sup>

“Neither the County nor the State has governing rules that would give one overlying groundwater user an advantage over a new overlying groundwater user for cannabis cultivation purposes. Neither the County nor the State have a mechanism in place to track or monitor groundwater production in individual wells. For these reasons, potential impacts on groundwater supply are considered significant. Mitigation measures for reducing impacts to groundwater use could include new County policies regarding groundwater extraction and monitoring. *However, new County policy and regulations for groundwater use is beyond the scope of the proposed project and are not considered feasible. Therefore, groundwater impacts are considered significant and unavoidable.*”<sup>36</sup>

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<sup>27</sup> DEIR p. 4.8-33-34.

<sup>28</sup> DEIR p. 2-5; second bracket for “deplete” denotes a grammatical typo in the DEIR.

<sup>29</sup> DEIR p. 4.16-15.

<sup>30</sup> Appendix E, p. 4-2.

<sup>31</sup> Appendix E, p. 4-1-2.

<sup>32</sup> DEIR p. 4.16-18; Appendix E p. 5-3 “5.2 Demonstrate Compliance with SWRCB Cannabis Cultivation Policy.”

<sup>33</sup> DEIR p. 4.8-4; 4.8-33.

<sup>34</sup> Appendix E, p. 4-3, 4-6.

<sup>35</sup> SYRCL acknowledges mitigation measure in Appendix E, 5.1.

<sup>36</sup> DEIR p. 4.16-19.

SYRCL disagrees with this assumption. New groundwater regulations for Nevada County are long overdue, and feasible given this new regulatory opportunity for the County.<sup>37</sup> As briefly mentioned in the DEIR, the Sustainable Groundwater Management Act (SGMA) was passed in 2014, the first time California regulated groundwater usage. Unfortunately, most of Nevada County does not fall under the jurisdiction of one of the Groundwater Sustainability Agencies (GSAs).<sup>38</sup> SGMA acknowledges that groundwater and surface water resources are “interconnected,” emphasizing the importance of integrated and sustainable management of water resources in California.<sup>39</sup>

SYRCL urges the County to take this opportunity to formulate new policies regarding groundwater monitoring and extraction, to not only understand the impacts of commercial cannabis cultivation, but for the health of our community and the Yuba River watershed. The NCCO DEIR “requires more than raw data; it requires also an analysis that will provide decision makers with sufficient information to make intelligent decisions.”<sup>40</sup>

The NCCO DEIR also does not take into account existing groundwater usage data that could assist in estimating groundwater impacts from commercial cannabis cultivation. The California Department of Water Resources (DWR) tracks well yield in Nevada County.<sup>41</sup> While the data is proprietary, the County is a public agency and therefore can consult with DWR and request access to that data in order to accurately assess environmental impacts. SYRCL encourages the County to formally consult with DWR, an important step to sustainably manage groundwater resources and comply with CEQA.<sup>42</sup>

Finally, SYRCL recommends an additional mitigation measure in the FEIR and NCCO, onsite localized mandatory groundwater recharge. A number of eligible parcels for cultivation in Nevada County already have onsite ponds that act as localized recharge.<sup>43</sup> This is also a feasible mitigation measure the County could promulgate through the FEIR and NCCO, citing existing Policy 11.3 in the County General Plan.<sup>44</sup> For more information, SYRCL recommends contacting the United States Geologic Survey (USGS) and the Community Water Center website.<sup>45</sup>

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<sup>37</sup> Community Water Center SGMA Resources, “In some groundwater basins, there are areas that do not fall within the jurisdiction of any public water or land-use agency. These areas, often called white areas or unmanaged areas, are by default the responsibility of the county.”

<sup>38</sup> See California Department of Water Resources SGMA Portal Basin Boundary Modification Request System.

<sup>39</sup> See SGMA § 354.34.

<sup>40</sup> See *County of Amador v. El Dorado County Water Agency* (App. 3 Dist. 1999) Cal.App.4th 931; §21002.1.

<sup>41</sup> See DWR contact for North Central Region Bill Brewster, Senior Engr. Geologist, 916-376-9657, Bill.Brewster@water.ca.gov; see also DWR Website, “Data and Tools” <<https://water.ca.gov/Programs/Groundwater-Management/Data-and-Tools>>

<sup>42</sup> See *Banning Ranch Conservancy v. City of New Port Beach* (March 30, 2017) 2 Cal.App.5th 918, where the court found it was a “prejudicial error” the lead agency did not coordinate and consult with the California Coastal Commission.

<sup>43</sup> See *The Highway 68 Coalition v. County of Monterey* (August 24, 2017) 14 Cal.App.5th 883, “The County’s reliance on a groundwater recharge system to replace water used by the project and its assumptions of project water demand were also supported by substantial evidence in the record”; CEQA Guidelines p. 35.

<sup>44</sup> DEIR p. 4.8-25.

<sup>45</sup> See <<https://www.communitywatercenter.org/>>.

**C. The DEIR Water Quality and Hydrology Impacts Section does not provide all feasible mitigation measures.**

The DEIR Water Quality and Hydrology Section lists some vague mitigation measures of which SYRCL requests additional analysis or clarification. We appreciate that the County articulates state regulatory requirements for cannabis cultivators from the CVRWQB, U.S. Department of Fish and Wildlife, California Department of Fish and Wildlife, and the U.S. Army Corps of Engineers, including ensuring all stormwater runoff be collected at the project site and discharged to permitted treatment facilities.<sup>46</sup> However, existing state regulations are not mitigation for local environmental impacts.

The DEIR Impact 4.8-1 categorizes Water Quality impacts into Short-Term Construction (STC) Impacts and Long-Term Operational (LTO) Impacts for both personal cultivation and commercial/non-remuneration operations. For commercial/non-remuneration operations, the DEIR finds that the impacts may be significant. However, the DEIR then only states, “Therefore, future proposed project would be required to comply with respective RWQCB policies.”<sup>47</sup> SYRCL requests that the County elaborate on the analysis and linkage between some suggested mitigation measures and the County’s eventual finding of less than significant impacts to water quality from cannabis cultivation.

The NCCO does have a tiered permit system, the CCP, ADP, and ACP would be required for a legal cannabis cultivator and they each have issuance requirements that may mitigate water quality impacts.<sup>48</sup> SYRCL thanks the County for the detailed analysis on 4.8-31 that applies specific requirements in the permits to mitigating certain water quality impacts like stormwater pollution and sedimentation. Additionally, the notation that the Planning Director would review CCP and ADP permits for conformance of all water quality standards will help ensure feasible mitigation for water quality impacts and consistent enforcement.

The main mitigation measure the County offers is Nevada County Land Use and Development Code Section L-II 4.3.17 Watercourses, Wetland, and Riparian Areas.<sup>49</sup> This is mainly a list of state agency requirements that include setbacks, a Biological Inventory list and a possible Management Plan requirement if the other standards “preclude development” or the project “adversely affect another environmentally sensitive resource.” SYRCL recommends including a few more requirements in the “Management Plans,” including Best Management Practices (BMPs) that include soil building and soil health monitoring to mitigate other water quality impacts such as nutrients and bacteria.

Another vague mitigation measure that is listed for water quality impacts is the  
“purchase of compensatory habitat acreage within Nevada County of comparable or superior quality within a qualified wetland or riparian area mitigation banking site in Nevada County ensuring full replacement consistent with the [LL-II 4.3.17] standard. The bank developer shall provide assurance to the County that the created wetlands or riparian areas are permanently protected and maintained.”<sup>50</sup>

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<sup>46</sup> See CVRWQCB General Order, WQ 2017-0023-DWQ; DEIR p. 4.8-32.

<sup>47</sup> DEIR p. 4.8-32.

<sup>48</sup> DEIR p. 4.8-31-33.

<sup>49</sup> DEIR p. 4.8-28, 4.4-42-43.

<sup>50</sup> DEIR p. 4.8-28-29.

SYRCL would encourage the County to add additional clarification to this measure, with important details such as what would qualify as “comparable or superior quality” riparian area. Additionally, SYRCL would like clarification on what qualifies as “assurances” from the bank developer.

The DEIR states that in order to conform with County Code Sec. L-V 13.14, implementation of a sedimentation and erosion control plan should be developed by a qualified professional to lessen the potential water quality impacts. SYRCL also recommends the County provide additional guidance on the required elements of the sedimentation and erosion control plans.

Additionally, SYRCL encourages the County to give additional guidance on who is considered a “qualified professional” in this section for the FEIR. We also recommend the County identify a relevant qualification or certification in the FEIR in order to establish a list of local experts to assist in implementation of this mitigation measure. If the plan is not overseen by a “professional,” the impacts to water quality and wastewater discharge could be significant.

Finally, SYRCL would also like to request that the County acknowledge that the Yuba River watershed has been designated a “priority” watershed by the State Water Resources Control Board (SWRCB). In addition to regions being classified as “impacted waterways” under section 303(d) list in the Clean Water Act, the SWRCB begun implementing enforcement actions in 2019 in certain parts of the watershed. The designation and subsequent actions show that the Yuba River watershed is highly impacted by cannabis cultivation. This should be acknowledged in the FEIR.

## **V. The DEIR “No Groundwater Cultivation Alternative” is not a feasible alternative for Nevada County or the Yuba River watershed.**

The County must consider a wide variety of Project alternatives in addition to the required “no project alternative” and Reduced Cultivation Area Alternative.<sup>51</sup> As stated in our original NOP scoping comments, SYRCL encouraged a variety of Project alternatives because

“a variety of alternatives will provide this community with a robust analysis, and subsequent flexibility, for a still-evolving state regulatory future while still protecting the Yuba River watershed.<sup>52</sup> Additionally, a variety of alternatives will also allow *local* knowledge and data to be formally considered through this robust environmental process . . . *Finally, a variety of project alternatives will also give the community several options moving forward with the complete legalization of commercial cannabis cultivation.*”<sup>53</sup>

Here, the County not only produced a number of infeasible alternatives, but alternatives that do not actually mitigate or lessen environmental impacts.

SYRCL recommends that the County remove the “No Groundwater Cultivation Alternative” from the FEIR due to lack of feasibility, as allowed under CEQA regulations.<sup>54</sup> Under CEQA, “An EIR is not

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<sup>51</sup> CEQA Guidelines § 15126.6.

<sup>52</sup> See 2018 Legislation Update by California Growers Association for more information. <[https://www.calgrowersassociation.org/2018\\_legislation](https://www.calgrowersassociation.org/2018_legislation)>.

<sup>53</sup> SYRCL NOP comments p. 10 (emphasis added).

<sup>54</sup> CEQA Guidelines § 15126.6 (f) (1); see also § 21003 (c) “Environmental impact reports omit unnecessary descriptions of projects and emphasize feasible mitigation measures and feasible alternatives to projects.”

required to consider alternatives which are infeasible,” and factors that may be used to eliminate alternatives from detailed consideration in an EIR include infeasibility.<sup>55</sup> CEQA Guidelines further define feasibility, “Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, *economic viability*, *availability of infrastructure*, general plan consistency, other plans or regulatory limitations, . . . No one of these factors establishes a fixed limit on the scope of reasonable alternatives.”<sup>56</sup> However, “if the agency finds certain alternatives to be infeasible, its analysis must explain in meaningful detail the reasons and facts supporting that conclusion.”<sup>57</sup> SYRCL provides a list of reasons below to support the infeasible conclusion.

First, this project alternative is hydrologically infeasible. Implementation of this alternative would place additional stress on surface water resources from the various watersheds, including primarily the Yuba River watershed, if there was to be a complete ban on using groundwater resources for cannabis cultivation.

Second, this project alternative is fiscally irresponsible and therefore infeasible. This alternative would not be possible with existing infrastructure, and therefore force NID and other entities to build additional water infrastructure. This would in turn place an enormous burden on our community and strain on the Yuba River watershed to provide surface water to all eligible parcels under the NCCO for cannabis cultivation. Under the Utilities and Services section, the DEIR notes that the impact of 4.16-2 “Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects” would be less than significant, noting “Commercial Cannabis operations may obtain water from NID. NID has noted that adequate water supply is available to serve the proposed project. Thus, impacts would be less than significant.”<sup>58</sup> This would certainly not be the case if the County chose to move forward with this project alternative.

Third, this project alternative is infeasible due to lack of enforcement capacity. In other words, this project alternative would be impossible to enforce in the County. As the DEIR states, a large portion of the County already uses groundwater for agricultural irrigation. Enforcing and preventing individual landowners from using existing wells on the property would be very difficult.

Fourth, this project alternative is environmentally infeasible. As briefly mentioned above with water usage impacts, this alternative would increase environmental harm, contrary to the intent of CEQA project alternatives. Not only would alternative source of water would potentially cause environmental harms to the Yuba River watershed, forcing some cultivators to truck in water will also have air quality, traffic and road maintenance impacts the County would have to take into consideration and mitigate.

Finally, this alternative could also be interpreted as the County “taking” a property right and, therefore, potentially legally infeasible. As mentioned previously, Nevada County is currently not within the jurisdiction of a GSA or under the purview of SGMA. While that is discouraging due to lack of

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<sup>55</sup> CEQA Guidelines § 15126.6 (a), (c).

<sup>56</sup> CEQA Guidelines § 15126.6 (f) (1); *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; see *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1753, fn. 1.

<sup>57</sup> *Marin Municipal Water District v. KG Land Corporation California* (1991) 235 Cal.App.3d 1652, 1664.

<sup>58</sup> DEIR p. 4.16-14-15.

groundwater usage and overall sustainability of groundwater resources in our community, for this DEIR, the regulatory setting is important to note because groundwater is still considered a property asset and right when purchasing real estate in Nevada County.

SYRCL recommends the County remove the No Groundwater Cultivation Project Alternative from further consideration in the FEIR, and instead encourage the County to focus on adjusting baseline applications for realistic environmental impacts and craft reasonable and feasible mitigation measures for groundwater impacts.

## VI. Conclusion

In closing, SYRCL appreciates the County's time and dedication to the environmental review process of the NCCO. Our community and the Yuba River watershed need an accurate analysis of environmental impacts from existing, potential, and most likely commercial cannabis cultivation. We appreciate the time and energy the County and the community have spent thus far on the legalization process, and once again express our intent to encourage the legalization and regulation of cannabis cultivation in Nevada County in order to protect the Yuba River watershed.

It is in that spirit of collaboration we welcome the opportunity to work closely with the County during the final draft of the ordinance and EIR. For coordination, clarification or discussion of any technical matters raised in this letter, please do not hesitate to contact our River Science Director, Rachel Hutchinson or our River Policy Manager, Ashley Overhouse by email or phone (530-265-5961).

Sincerely,



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