April 16, 2019

Re: Federal Laws Prohibit Water Deliveries for Cannabis and Hemp Cultivation

Dear Water User:

This letter is to provide you notification of the federal laws prohibiting the use of raw water delivered by the Imperial Irrigation District for the cultivation of cannabis and, for an interim period, hemp.

Under the Federal Controlled Substances Act, cannabis is a Schedule I controlled substance. (21 U.S.C. §812.) It is a federal crime under the Act to cultivate, manufacture, distribute, dispense or possess cannabis. (21 U.S.C §§ 841(a)(1), 844(a).) IID receives its water from facilities owned by the United States Bureau of Reclamation and its water orders must be approved by Reclamation for the delivery to the Imperial Valley. As a result, the order and delivery of water to IID is governed by Reclamation’s policies, under which it has the clear authority to not approve IID’s water orders when approval would result in the use of Reclamation facilities in the cultivation of cannabis that is prohibited under the Controlled Substances Act. (PEC TRMR-63 (2019).) Further, should Reclamation become aware that its facilities were used to facilitate the federally prohibited cultivation of cannabis, such use would be reported to the Department of Justice. (PEC TRMR-63 (2019).)

The 2018 Farm Bill defined “hemp” as “the plant Cannabis sativa L. and any part of that plant, including seeds thereof and all derivatives,…with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” (Title X, Sec. 10113 of Public Law No. 115-334.) The 2018 Farm Bill removed hemp, as defined, from being a Schedule I controlled substance. (Title X, Sec. 12619 of Public Law No. 115-334.) However, the 2018 Farm Bill maintains federal regulation of hemp production under the jurisdiction of the United States Department of Agriculture. (Title X, Sec. 10113 of Public Law No. 115-334.) Pursuant to the 2018 Farm Bill, the USDA will develop regulations to evaluate and approve plans submitted by states to regulate the production of hemp within the state. (Title X, Sec. 10113 of Public Law No. 115-334.) However, the USDA will establish a federal regulatory plan for states that do not have a USDA-approved plan. (Title X, Sec. 10113 of Public Law No. 115-334.) The production of hemp is illegal under federal law and subject to enforcement, if not in accordance with a USDA-approved state plan or the USDA plan. (Title X, Sec. 10113 of Public Law No. 115-334; Agricultural Marketing Act of 1946 (7 U.S.C. §§1621 et seq.).) To date, California is preparing a regulatory plan for submission to the USDA for approval and the USDA is in the process of establishing a federal regulatory plan. However, no USDA-approved California regulatory plan or USDA federal regulatory plan is currently in place and, therefore, hemp production remains illegal under federal law until either occurs.
A regulatory plan, whether developed by the State of California or the USDA, must include, among other things, provisions for: (a) maintaining information regarding the land on which hemp is produced, (b) testing levels of delta-9 tetrahydrocannabinol to ensure it does not exceed the 0.3 percent limit, (c) disposal of plants and products that do not meet necessary requirements, and (d) ensuring compliance with the 2018 Farm Bill.

The 2014 and 2018 Farm Bills also provide for the legal cultivation of hemp for education purposes or under a pilot project of the California Department of Food and Agriculture. In order to receive water for the cultivation of hemp for educational purposes or under a CDFA pilot project, a grower must provide the following:

A. If for educational purposes:

1. A letter, signed under penalty of perjury and on official institutional letterhead, from a full-time regular professor at an accredited institution of higher education: (i) stating that s/he is conducting a research investigation using industrial hemp that falls within the parameters established by the 2014 Farm Bill, (ii) identifying the land(s) upon which the industrial hemp is to be cultivated, and (iii) identifying the individual(s) authorized to order water for the research project; and

2. A letter, signed under penalty of perjury and on official institutional letterhead, from an administrative official at the accredited institution of higher education with a rank of Dean or higher stating that the professor is employed by the institution and that s/he is authorized to conduct the research in question.

B. If pursuant to a CDFA pilot project:

1. A letter, signed under penalty of perjury and on CDFA letterhead, stating the cultivation is for the purpose of studying the growth, cultivation, or marketing of industrial hemp and that the cultivation site is certified by and registered with the CDFA.

Please note that pursuant to the forgoing laws, IID cannot deliver water to cannabis crops under any circumstance as long as cannabis remains a Schedule I controlled substance. Further, IID cannot deliver water to hemp crops for the interim period until there is a USDA-approved California regulatory plan or a USDA federal regulatory plan in place, unless one of the two exemptions described above are fulfilled with the documentation provided to IID. IID will provide notification when a California plan is approved by the USDA or the USDA develops a federal plan allowing the lawful production of hemp under federal law not otherwise under an exemption.

Sincerely,

Enrique B. Martinez
General Manager