

Members of the Cannabis Control Division,

This set of revised rules was supposed to include changes in response to public comment provided on the first hearing that took place on June 29th. Many of those concerns were over water rights, excessive water use and industry access for locals. Despite the addition of some social equity language and minor changes to regulations, this proposed set still does not address issues mentioned and in fact, strengthens and prioritizes existing and well-financed operators. The lack of substance in the equity language, the addition of an unlawful variance mechanism, mediocre water protections, a change in language regarding felony convictions and the inability to report illegal and unlawful activities of producers are all evidences of ways the industry continues to build a stronghold on this industry over locals. It is important that regulators and agencies remain focused on protecting and prioritizing water and New Mexican residents over out-of-state investors coming to capitalize off of a struggling economy. The New Mexico Cannabis Justice Project therefore sends the following comments addressing these issues.

### Social Equity

RLD Superintendent Linda Trujillo has stated that there are no real avenues for New Mexicans to enter the industry “without access to bank loans and other financing.” The current round of rulemaking can still include meaningful social equity language that can address several key aspects of this evident flaw. Examples are:

- Timelines, benchmarks and requirements for the proposed “Social and Economic Equity plan” that was introduced in the General Provisions.
- A specific exemption for rural growers *without access to broadband* to utilize alternative security systems.
- Provisional licenses with contingencies that may be issued *only* to real microbusinesses, rather than to large operators who can use such licences to bypass operational requirements.
- A requirement that producers incubate and/or host small operators, rather than merely tracking diversity in the workforce.
- Fines that are variable tied to licensure size.

- A working and easily understood definition of what a social equity applicant in fact is.

Regarding such a social equity applicant definition, the CCD has itself shared with the public multiple documents and references from other states with legal recreational cannabis that provide examples of what for those states constitutes a social equity applicant. However, the CCD has made no attempt to define what such a social equity applicant in fact is here in New Mexico. We find this to be remarkable given the level of poverty existing in New Mexico, the fact that since 1990 New Mexico has been recognized nationally as a “majority minority” state, and that the economy of New Mexico is as racialized as it is, with Anglos at the top.

The CCD is yet again kicking social equity down the road. We reiterate our request from the first round of rulemaking, that the adoption of these rules again should be postponed until the CRA is in place and has the required social equity procedures and best practices in place.

#### An Unlawful Variance Mechanism

The variance mechanism included in the draft rules is unlawful and, if implemented, could result in devastating consequences. As written, the variance would allow any applicant or licensee to evade water, equity, plant limits and environmental requirements, the latter of which have not even been drafted for public consideration. There is nothing in the CRA or the Uniform Licensing Act that authorizes such a variance or allows for the CCD to promulgate procedures authorizing a variance.

We are concerned that this addition is an attempt to allow the New Mexico Office of the State Engineer - an institution remarkably debilitated, in this time of extreme drought, by lack of staff and inadequate funding - to approve entities that have not clearly demonstrated the possession of legal water rights.

We call for **the immediate removal of this language** and that instead the state be required to fund the OSE so that it can handle both the increase in water applications and also fund measures to audit and investigate water theft and misappropriation. OSE should not be burdened with yet another “unfunded mandate.”

#### Water

Important water considerations sent in from both the New Mexico Acequia Association and New Mexico Rural Water Association during the last public hearing were not inserted. These should be re-considered.

- An accessible, online notice of applications submitted is needed for water systems and communities to better determine whether a new proposed use will impair their water rights or be contrary to conservation or detrimental to public welfare
- The CCD should be required to consult with the OSE or water provider to prove legitimacy. CCD has no experience with reviewing and evaluating water documentation and whether an application's identified water source is sufficient to meet the needs of the license. Such review and evaluation must be transparent.
- The water and conservation plan must require estimated energy use. This is now more important than ever given climate change impacts and the State's goal of moving away from its reliance on fossil fuels for its energy grid. All industries much be held accountable regarding energy use, including the cannabis industry.
- OSE is saying that it will require metering for all transfers of water into an existing groundwater well. However, this is not specifically required by the law and there is no mention within these draft rules regarding the use of metering wells or limits on such water transfers, in spite of current extreme drought conditions. Nor are there limits on water transfers. This can directly and indirectly impact domestic water consumption, including drinking water.
- Water use requirements for "immature plants" are lacking in the rules, although water is an important component at all phases of cultivation.

Domestic rural water systems exist throughout the state. These have proven to be unprepared and without means to keep medical cannabis grow operations from violating membership agreements or a water system's permitted use. They have yet to engage in water accounting to determine whether they even have the water rights to provide water for commercial cannabis production.

No guidance has been provided by the state nor has there been an attempt to understand issues within various water systems to better help develop informed guidelines on appropriate water use. These proposed rules again benefit large operators and provide little or no consideration into current conditions which include the already weak or absent regulations needed to adequately protect drinking water.

The CCD needs to promulgate rules regarding environmental impacts, natural resources, public health and safety BEFORE it adopts producer regulations.

## Criminal Justice

Changes in the draft rules regarding criminal history and screening requirements imply CCD discretionary power for license denial based on a prior felony conviction for possession of a controlled substance which violates the Uniform Licensing Act and the CRA. The law as passed clearly states that a denial of licensure must be job related and consistent with business necessity.

The removal of this language is unlawful and undermines the intent of this legislation to include individuals previously harmed by the drug war, and not just marijuana. This is an inclusionary provision that can and will impact the very people who laid the foundation for this legal industry. It is a further revocation of the “justice” measures that most New Mexicans supported. This is yet another example of language and measures set to favor out-of-state investors and corporations disconnected to the history and harms put upon our communities from cannabis prohibition.

## Industry Prioritization

There are still no protocols to file a complaint nor meaningful penalties, other than unlimited amounts of monetary penalties, for bad operators as has been evidenced by existing medical producers. There is a complaint form about mold and bacteria but not to report water theft, use of weapons on licensed cannabis premises, use of drinking water for agricultural use, excess rubble, transportation of cannabis through federal lands, human trafficking, and threats on community resources/individuals.

The industry needs to be held accountable, especially considering it is favored to out of town and wealthy interests with no concern nor understanding of New Mexican values. The CCD, for unknown reasons, also removed the initially proposed regulations on denying, suspending, revoking a license; sanctions, plans of correction, and civil monetary penalties: Title 16, Chapter 8, Part 12. therefor allowing further entitlements to bad operators.

In conclusion, all proposed regulations still favor corporate interests and are premature at this time as they have not been reviewed and approved by the Cannabis Regulatory Advisory Committee per required of the CRA. The rush to bring in revenue for large operators and the State, which will not likely reach the average New Mexican for some time if at all, compromises the promises of a new economic sector that could take shape within a context of sustainable development and help to better define what sustainable development means for New Mexico.