

# SANDLER REIFF

SANDLER REIFF LAMB  
ROSENSTEIN & BIRKENSTOCK, P.C.

1025 Vermont Ave NW, Suite 300  
Washington, DC 20005  
[www.sandlerreiff.com](http://www.sandlerreiff.com)  
T: 202-479-1111  
F: 202-479-1115

July 7, 2017

## Via Facsimile and First Class Mail

Michael J. Ryan, Regional Director  
Great Plains Regional Office  
Bureau of Reclamation  
2021 4<sup>th</sup> Avenue North  
Billings, MT 59101

Re: Irrigation of Industrial Hemp Cultivated Pursuant to 2014  
Federal Farm Bill

Dear Mr. Ryan:

I am writing on behalf of our client, Vote Hemp, a nonprofit organization advocating for continued and expanded deregulation of industrial hemp. It has come to the attention of Vote Hemp that the Bureau of Reclamation advised the Helena Valley Irrigation District that it should deny access to water to a farmer, Ms. Kim Phillips, who was licensed by the Montana Department of Agriculture to cultivate industrial hemp under a pilot program sponsored by that Department as authorized by the 2014 Farm Bill.

According to press accounts, your office denied access to water to Ms. Phillips based on the Bureau of Reclamation Policy Release, "Use of Reclamation Water or Facilities for Activities Prohibited by the Controlled Substances Act of 1970," issued May 16, 2014. The policy states that, "Reclamation will not approve use of Reclamation facilities or water in the cultivation of marijuana." The introduction explains that "Reclamation's obligation as a Federal agency to uphold Federal law prohibits it from approving the use of Reclamation water of facilities to facilitate activities prohibited by the CSA."

What is critical for the Bureau to understand is that cultivation of industrial hemp under a state license is *not* prohibited by the Controlled Substances Act (CSA). By way of background, "industrial hemp" is a commonly used term for non-psychoactive (non-drug) varieties of the species *Cannabis sativa* L. that are cultivated for industrial rather than drug purposes. Industrial hemp plants grown in the United States, Canada and Europe are bred to contain less than three-tenths of one percent (0.3%) by weight of THC (the psychoactive element) in the flowering part of the plant, while drug marijuana varieties average about 15% THC, and range upward to much higher levels. The hemp plant—although entirely useless as drug marijuana—is biologically the same species as the marijuana plant: *Cannabis Sativa* L. The part of the *Cannabis* plant that can be used as a drug, if the plant is cultivated to have high THC content, is the flowers. The stalk, fiber, seed and oil of any *Cannabis* plant, and especially a plant bred as hemp to have very low

THC, in fact contain so little THC as to be useless as a drug. The CSA expressly provides that those latter parts of the marijuana plant—the stalk, fiber, sterilized seed and oil-- are *exempt* from the Act and not treated as illegal marijuana. Specifically, the definition of “Marihuana” specifically excludes “the mature stalks of such [cannabis] plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant...” 21 U.S.C. §802(16) (emphasis added). However, until recently, it was illegal to cultivate the hemp plant within the United States because the plant itself is the same species as marijuana and thus itself is a controlled substance.

That situation changed with enactment of the federal Agricultural Act of 2014, P.L. No. 113-79 (commonly known as the “2014 Farm Bill”). In the Farm Bill, Congress specifically, and for the first time since enactment of the CSA, authorized cultivation of industrial hemp under agricultural pilot research programs authorized by state law, ***“[n]otwithstanding the Controlled Substances Act. . .or any other Federal law. . .”*** P.L. No. 113-79, §7606, codified at 7 U.S.C. §5940(a).

Congress then clearly reiterated its intention that Federal agencies not interfere with industrial hemp pilot research programs authorized by state law, in the Consolidated Appropriations Act, 2016, P.L. No. 114, §763, which provides that:

- None of the funds made available by this Act or any other Act may be used
- (1) in contravention of section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940)); or
  - (2) to prohibit the transportation, processing, sale or use of industrial hemp that is grown or cultivated in accordance with section 7606 of the Agricultural Act of 2014, within or outside the State in which the industrial hemp is grown or cultivated.

Accordingly, the cultivation of industrial hemp plants under a license issued under state law, for an agricultural pilot program carried out pursuant to section 7606 of the 2014 Farm Bill, does not violate the CSA. Indeed, indeed, it is currently unlawful for any federal agency to interfere with such cultivation.

Montana has authorized agricultural pilot programs pursuant to the Farm Bill, and has authorized issuance of licenses by the State Department of Agriculture for cultivation of industrial hemp as part of such programs. Montana Code Annotated, §§80-18-102 *et seq.* Ms. Phillips received her license from the State Department of Agriculture under that state statute, as authorized by the Farm Bill.

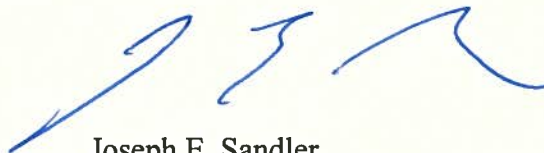
Accordingly, Ms. Phillips’ cultivation of industrial hemp is explicitly authorized by federal law and does not violate the Controlled Substances Act. Further, the Bureau’s refusal to make water available to Ms. Phillips is itself a violation of federal law because it represents the expenditure of appropriated funds in contravention of section 7606 of the Farm Bill, which is expressly prohibited by the Consolidated Appropriations Act, 2016.

Mr. Michael J. Ryan  
July 7, 2017  
Page 3

For these reasons, Vote Hemp respectfully requests that the Bureau publicly confirm its commitment to comply with applicable law by making Reclamation water available for cultivation of industrial hemp that is perfectly lawful under Federal law.

Thank you for your time and attention to this matter.

Sincerely yours,

A handwritten signature in blue ink, consisting of a series of fluid, connected strokes that form the name Joseph E. Sandler.

Joseph E. Sandler

cc: Jim Foster, Manager, Helena Valley Irrigation District (by mail)