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JUN 24 2014

Trinity County
Board of Supervisors
By: _____

Superior Court of California
County of Trinity

ELIZABETH W. JOHNSON
Judge

MEMORANDUM

TO: Trinity County District Attorney
Board of Supervisors ✓
Trinity County CAO

FROM: Staci Holliday, Court Secretary

DATE: June 24, 2014

RE: 2013-2014 Trinity County Grand Jury Report
*DAR-2013-2014-010 :Growing Issues of Marijuana Cultivation in
Trinity County:*

This report is being provided to your department pursuant to Section 933.05 of the Penal Code relative to grand juries. Penal Code § 933.05(f) requires that grand juries, **following approval by the Superior Court Presiding Judge and at least two working days prior to the public release of the report**, shall furnish each respondent a copy of the report which pertains to the respondent. No respondent shall disclose any contents of the report prior to the public release of the final report.

This report will become a matter of public record on **June 30, 2014**. Sections 933 and 933.05 require you to respond in writing to the findings and recommendations pertaining to matters under the control of you or your department. Your original response should be addressed to Elizabeth Johnson, Presiding Judge of Trinity Superior Court with a copy to the County Administrative Office "Clerk of the Board".

Enclosure

TRINITY COUNTY GRAND JURY
2013-2014

Development and Environment Committee
Final Report

DAR-2013-2014-010

Growing Issues of Marijuana
Cultivation in Trinity County

Approved June 19, 2014
Bob Morris, Foreperson

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JUN 23 2014

TRINITY COUNTY
SUPERIOR COURT

**2013-2014 Trinity County Grand Jury
Development and Environment Committee
DAR-2013-2014-010
The Growing Issues of Marijuana Cultivation in Trinity County California
Final Report
June 19, 2014**

Summary

The Grand Jury investigated the growing problem of Marijuana cultivation in Trinity County and found that the two prime categories of problems exist as a result of this enterprise: grows in private and public lands. The second set of problems are derived the lack of any controls in place by the county to deal with environmental damages and wholesale disregard for both short and long term environmental damage and the effect on resources such as drinking water, wild life and sustainable forest practices. For example: Trinity County does not have any regulation of excavation, timber harvest or road building on private land.

Glossary

**DA – District Attorney
TC – Trinity County
BOS – Board of Supervisors
M - Marijuana**

Background

Growers of M are not compelled to sustainable agricultural practices. Large quantities of nitrogen fertilizer are used combined with herbicides and pesticides. These chemicals are often illegal in general farming practice because of their toxicity to plants and animals. Water from streams and wells are often diverted from their natural flow. This re-channeling of a valuable resource has enormous impacts on the entire ecosystem, especially under drought conditions. As the water is used to nurture M plants, the runoff contains poisonous contaminants that enter the water table which ultimately impacts the health of the ecosystem, including the fish, birds, and humans.

The economic effects M of are very interesting because large amounts of money are brought into the community to procure farming materials, such as water storage vessels, irrigation equipment, fertilizers, pesticides, and tools. The scope of the M business is of such extent that the increasing inventory of farm supplies can easily be seen at all the hardware outlets within TC. Of course, these increased inventories are completely legal.

The M enterprise in TC is of such extent that the DA's office has insufficient resources to manage all the referrals. The DA is selective as to what cases to prosecute. Many cases are never brought to trial, but rather they are plea-bargained to mere confiscation of money and M.

Method of Investigation

The method of investigation for this report consisted of interviews and examination of documents, such as that provided in Ref. (1).

Discussion

TC has a major and growing M industry both legal and illegal. The size of the M business produces millions of dollars in profits which feeds many legitimate TC businesses. Very little of this profit finds its way into the county government coffers. The Planning Department sometimes receives funds from growers to provide building and easement permits. TC does not levy any taxes to growers, nor do agricultural restrictions. Growers are willing to take chances on illegal plots because the probability of any law enforcement is sufficiently limited that the profit prospects generally produce an overall net gain.

Federal, State, and County governments do not dedicate large amounts of resources to eradicate M growing within TC. The DA carefully reviews referred drug cases to eliminate the smaller offenses. DA resources are generally applied to the very large high return enterprises. Apparently the Sheriff's office also has reduced enforcement of M laws again because of insufficient resources.

Management of M growing within TC is most assuredly an enormous and complicated problem. The M industry has actually become an integral part of the economic support structure of TC. Other counties—namely Humboldt and Mendocino have begun to address the M growing problem. We see in the report that the effort to manage M growth is re-defined to emphasize good sustainable farming practices and regulation. This regulation includes tight controls on water diversions and land modifications, such as road building. Also, M growing can become a new source of taxation that can benefit the entire community.

In the case of illegal M grows no complete solution can be implemented without full cooperation of State, Federal, and county governments. In TC's case of minimal law enforcement resources the illegal industry will continue to grow with increased negative impacts on the environment. Strangely TC reaps some economic benefit from the grows, but suffers from increased criminality and environmental damage.

Findings

F1. M growing in TC is a large industry, but TC does not have adequate regulations, practices, and taxes to manage and benefit from the enterprise.

F2. DA has insufficient staff to prosecute all M cases within TC.

F3. Other counties, such as Humboldt, have implemented regulations and best practices to manage legitimate M grows.

F4. No plan exists to manage illegal M growing and transport of M within TC.

F5. The BOS establish and publish a policy regulating excavation on both public and private lands. Because there is no regulation growers are free to put in roads, culverts and make wholesale changes in creeks.

F6. The citizens of TC must familiarize themselves with the "Water Rights" of private citizens before they find they have none. In 2013 there were less than 10 well permits issued for the Southern Trinity, Trinity Pines area. So far in 2014 over 75 permits have been applied for. The water table and the aquifers that supply the water do not have an unlimited supply of water.

F7. The BOS must implement a plan to regulate the use of agricultural chemicals BEFORE the pristine drinking water we all take for granted is irreversibly damaged or destroyed.

Recommendations

Recommendations R1 through R6 correspond to each finding above. The BOS must address each finding in a report to the TC public via the Trinity County Web Site.

R1,R3, R4, R5 and R7. The BOS shall examine Ref. (1) and make a public report as to its applicability to TC. Then the BOS shall file its own report to clarify TC's stance on M growing within the county. This report shall include best agricultural practices, water restrictions, pesticides, land use requirements, trafficking requirements, collective requirements, taxation rules, and permits.

R2. The DA shall publish in the public record its policies toward enforcing M regulations within TC. The DA shall also recommend to the BOS a set of codes that will insure that legitimate growers meet environmental standards, including appropriate land use rules.

R4. The BOS shall establish a working group that will study and recommend ways to not only control, but how TC can benefit from the illegal growers. These recommendations shall be published in the TC website and submitted to State and Federal representatives. The question of how illegality can be transformed into legality must be considered. Will the Washington/Colorado models work for TC? Would creative fining be a way to bring illegitimate growers into the community?

R6. The BOS shall publish in the TC website information regarding water rights within county. This publication shall reference rules and restrictions regarding installation of wells and pumping from local aquifers.

Request for Responses:

R1 – R7 must be responded within 90 days upon receipt of this report.

County Board of Supervisors

County Administrative Officer

Reference:

http://co.humboldt.ca.us/board/agenda/questys/mg218885/as218921/ai224352/do224464/bosage_ndaitem.pdf

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A "Growing" Issue: Environmental Impacts of Medical Marijuana in Northern California
California Department of Fish and Game – Northern Region
Draft briefing – July 2012

I. Issues:

- a. The environmental impacts of producing medical marijuana continue to increase across northern California.
- b. These are not "cartel grows" or other operations run by foreign nationals on federal, state, or local public lands, but grow operations on private lands in rural areas.
- c. California Proposition 215 (1996) and California Senate Bill 420 (2003) have created a vague, quasi-legal status for these activities. Creation of regulation, local ordinances, and other oversight tools for the emerging industry are lagging well behind. Prosecution for Fish and Game Code violations and environmental damage is difficult.
- d. Increased investment in all aspects of medical marijuana production and distribution has created a "gold rush" atmosphere in rural areas of Mendocino, Humboldt and Trinity counties for growers, land speculators, realtors, horticultural suppliers, and other supply and service providers.

II. Impacts:

- a. Water Diversion – Water from rivers, creeks, and streams is taken via dams, pumps, and hoses throughout the growing season, including the dry weather, low-flow period of June-October. Water is taken from small tributaries that feed fish bearing waters downstream. Low-flow periods are critical to the survival of listed anadromous fish species and other sensitive aquatic species including juvenile salmon and steelhead.
 - i. Industry accounts documents a 150 day watering period, at 6 gallons per plant per day, totaling 900 gallons per plant per season. A 10000 square-foot grow may use 360,000 gallons per season. Streams cannot support fish and provide large amounts of water to growers during low flows.
- b. No use of "Best Management Practices" (BMPs) or Stream Protection Buffers - Grow operations do not typically use BMPs to design and build roads, stream crossings, ponds, and cleared areas for growing. Failure of these features during winter storms is common. In many cases, these features are built adjacent to, or within rivers, creeks, streams, and wetlands, without appropriate buffers to protect aquatic species, vegetation, and water quality.
- c. Pollution – Petroleum products, fertilizers, soils amendments, killing agents (pesticides, herbicides, rodenticides, etc.), sediment, thermal pollution (increased water temperature), and trash and human waste may contaminate water at grow sites.
 - i. Petroleum products are used to generate power at remote sites and are often stored both above and below ground inappropriately and unsafely, spilling into water sources.
 - ii. Fertilizers, soil amendments, and other toxic agricultural chemicals are often overused and unsafely stored. Grow sites and soil disposal areas continually leach these materials into rivers and streams, contributing to increased algal growth and decreased water quality.
 - iii. Pesticide "fences" are used to kill animals that may damage crops such as mice, wood rats, ground squirrels, gophers, deer, and bear. Native predators, such as

bobcat, coyote, fisher, and marten are indirectly killed by eating prey that has consumed killing agents.

- iv. Sediment and thermal pollution cause long-term damage to creeks and streams.
- v. "Grow trash" such as plastic hose, gardening and building supplies, and garbage is common in large amounts. Growers often live on site and have poorly developed, or no toilet and septic systems.

d. Conversion and fragmentation of natural areas and wildlife habitat – Forest, woodland, wetland, and grassland habitats are cleared and converted to open growing space. Many clearings result in bare soil and terraced hillsides. Riparian and aquatic habitat is removed, buried, or dewatered. Large trees and other vegetation are removed to improve sun exposure on site.

III. Sensitive species and habitats affected:

- a. Coho and Chinook salmon, steelhead and coastal cutthroat trout
- b. Amphibians – California and northern red-legged frog, foothill yellow-legged frog, southern torrent salamander, and tailed frog.
- c. Reptiles – Western pond turtle
- d. Birds – Northern spotted owl
- e. Carnivores – Fisher and marten
- f. Sensitive habitats and natural communities – Wetlands and riparian areas, oak woodlands, serpentine woodlands and shrublands, Bishop pine forest.

IV. Solutions:

- a. Focus outreach to discuss environmental impacts and permitting with growers and other stakeholders. This may include:
 - i. Encourage water diverters to find alternatives to diverting out of streams, especially during low-flow periods such as by collecting rainwater of roof-tops and increasing storage capacity by adding tanks.
 - ii. Provide BMPs and other examples of correctly installed roads and building sites and why sediment in streams damages the environment.
 - iii. "More fertilizer is not the solution" - Using too much fertilizer allows excess nutrients to seep into groundwater and runoff into streams during rains. Excess fertilizer in water = algae growth = degraded conditions for fish food, such as mayflies and caddisflies = less fish.
- b. Prioritize important watersheds for outreach and enforcement.
- c. Work with DFG management and other programs to create dedicated enforcement/compliance staff.
- d. Treat all stakeholders and ownerships similarly. Work with all to provide guidance and to bring into compliance with existing state and local laws and ordinances.
- e. Coordinate with other agencies including water quality, federal land managers, local enforcement, environmental health and county/city planning. Support better defined state and county regulations to provide specific guidance for growing operations such appropriate locations to minimize environmental impacts, number of plants etc.



State of California – The Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Northern Region
601 Locust Street,
Redding, CA. 96001
www.dfg.ca.gov

EDMUND G. BROWN, Jr. Governor
CHARLTON H. BONHAM, Director



November 2, 2011

Mr. Steven Lazar, Planner One
County of Humboldt Community Development Department
3015 H Street,
Eureka, California 95501

**Subject: 314-55.1 Medical Marijuana Land Uses: Inland
313-55.1 Medical Marijuana Land Uses: Coastal**

Dear Mr. Lazar:

The Department of Fish and Game (DFG) has reviewed and understands that the County of Humboldt Community Development Department (County) has been developing a Medical Marijuana Land Use Ordinance for Inland and Coastal portions of the County, and is now proposing a public hearing to discuss the matter before the Humboldt County Board of Supervisors on November 15, 2011. The ordinance states:

The purpose and intent of the Medical Marijuana Land Use Code (MMLUC) is to regulate medical marijuana collective or cooperative dispensing facilities (CCDF) and the cultivation of medical marijuana for personal use in a residence or detached accessory building in a manner that is consistent with State law and promotes the health, safety, comfort, convenience, and general welfare of the residents and businesses within the unincorporated area of Humboldt County by balancing three primary needs: the needs of patients and their caregivers to have access to medical marijuana; the need of residents, businesses, and communities to be protected from public health, safety, and nuisance impacts that can accompany the cultivation, processing, and transfer of medical marijuana; and the need to eliminate, or at least limit to the extent possible, the harmful environmental impacts that can accompany marijuana cultivation.

DFG understands that the MMLUC under consideration is Phase 1, and future ordinances will be developed to address other issues associated with medical marijuana, such as outdoor grows, in the unincorporated portion of Humboldt County. We greatly appreciate the efforts by the County to protect the public trust resource, and DFG has recommendations on how the County will "limit to the extent possible, the harmful environmental impacts that can accompany marijuana cultivation." Specifically,

Conserving California's Wildlife Since 1870

Mr. Steven Lazar
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DFG is concerned that un-permitted surface water diversion of Humboldt County streams will result in stream de-watering, contribute to already impaired aquatic conditions, and result in "take" of State and federally listed species such as coho salmon (*Oncorhynchus kisutch*).

Aquatic Species at Risk and Impaired Streams

Many Humboldt County streams are fish-bearing and currently support three listed salmonid species. Coho salmon is State- and federally-listed as "threatened" pursuant to the California Endangered Species Act (CESA) and the federal Endangered Species Act (ESA). Chinook salmon (*O. tshawytscha*) and steelhead (*O. mykiss*) are federally-listed as "threatened" pursuant to the ESA. DFG has identified Humboldt County's entire coho salmon population key to maintain or improve as part of the *Recovery Strategy of California Coho Salmon* (DFG 2004). Coho salmon have undergone at least a 70% decline in abundance since the 1960s, and is currently at 6% to 15% of its abundance during the 1940s (DFG 2004).

DFG maintains historic files and databases on the abiotic and biotic condition of streams within the region. Numerous aquatic dependent Species of Special Concern (SSC) are present in Humboldt County streams including the coastal cutthroat trout (*O. clarki clarki*), foothill yellow-legged frog (*Rana boylei*), northern red-legged frog (*R. aurora*), western tailed frog (*Ascaphus truei*), southern torrent salamander (*Rhyacotriton variegates*), and western pond turtle (*Actinemys marmorata*).

DFG designates certain vertebrate species as SSC because declining population levels, limited ranges, and/or continuing threats have made them vulnerable to extinction or extirpation in California. Though not listed pursuant to the federal ESA or CESA, the goal of designating taxa as SSC is to halt or reverse these species' decline by calling attention to their plight and addressing the issues of conservation concern early enough to help secure their long-term viability. Hence, the ultimate goal of the SSC designation is to *avoid* CESA or ESA listing.

Pursuant to Clean Water Act §303(d), the North Coast Regional Water Quality Control Board has identified several of Humboldt County's streams as impaired due to elevated levels of sedimentation/siltation and temperature. As one regional example, the South Fork Eel River had extreme low-flows in 2008 and 2009. The United States Geologic Survey gauge at Miranda shows that for the 69-year period of record, the mean discharge in September is 53 cubic feet per second (cfs). The discharge in September 2009 was approximately 20 cfs. The record low discharge was in September 2008 at 13 cfs, a quarter of the mean discharge for the period of record. Low instream flow leads to increased water temperature, disconnected pools, and degraded salmonid rearing habitat.

Mr. Steven Lazar
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Project Referrals and Water Sources

Humboldt County is approximately 3,573 square miles, of which, 3,550 square miles are unincorporated and contain 54% of the human population. Since May 2011, DFG has received seven project referrals for CCDF's in unincorporated portions of Humboldt County. In general, developed parcels within the County rely either on community water systems (e.g., Garberville Community Service District, Humboldt Bay Municipal Water District, etc.) or private water systems.

DFG believes that the cumulative effect of private water systems on stream flow in unincorporated Humboldt County is substantial. Private water systems are usually on a parcel with the residence or have deeded access to a water source, and can include wells, springs, or surface water diversions (i.e., streams). A spring can either be connected to a stream, river, or lake (i.e., jurisdictional); or not, in which case the spring would not be within the jurisdiction of DFG or subject to a Lake or Streambed Alteration Agreement (LSAA). Furthermore, shallow wells close to streams can also be hydrologically connected to surface water flow, in which case, the well would likely require an LSAA. The MMLUC does not address existing/historical water diversion within the unincorporated portions of the County.

Lake or Streambed Alteration Agreement

DFG is responsible for conserving, protecting, and managing California's fish, wildlife, and native plant resources. To meet this responsibility, the Fish and Game Code Section 1602 requires an entity to notify DFG of any proposed activity that may substantially modify a river, stream, or lake. In terms of water diversion on jurisdictional spring development or hydrologically connected wells, notification is required by any person, business, State or local government agency, or public utility that proposes an activity that will: "substantially divert or obstruct the natural flow of any river, stream, or lake."

Once DFG has received the notification pursuant to Section 1602, DFG will determine if the activity may substantially adversely affect fish and wildlife resources. If DFG determines that the activity may substantially adversely affect fish and wildlife resources, an LSAA will be prepared. The LSAA includes reasonable conditions necessary to protect those resources and it must be compliant with the California Environmental Quality Act. Section 1602 of the Fish and Game Code does not include a "grandfather clause," meaning all substantial diversions are required to notify and apply for an LSAA, regardless of how long they have been in use.

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Recommendations

1. Section 55.1.9 of the MMLUC should include a standard that all private water sources comply with Section 1602 of the Fish and Game Code, and notify DFG of the water diversion. Once the Notification is received, DFG will determine if an LSAA is required.

If you have any questions or comments regarding this matter, please contact Senior Environmental Scientist Tony LaBanca at (707) 441-2098 at 619 Second Street, Eureka, California 95501.

Sincerely,



NEIL MANJI
Regional Manager

ec: Messrs. Curt Babcock, Tony LaBanca, and Michael van Hattem
Ms. Jane Arnold, Gayle Garman, and Laurie Harnsberger
Department of Fish and Game
cbabcock@dfg.ca.gov, tlanca@dfg.ca.gov, mvanhattem@dfg.ca.gov,
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References

Department of Fish and Game. 2004. Recovery Strategy for California Coho Salmon.
Report to the California Fish and Game Commission. Sacramento, CA.

Water board fines landowner \$56,000 for pot grow damage

By Linda Williams/The Willits News

POSTED 04/18/2014 11:48:39 AM PDT



View of the 1.8 acre earthen grow pad, with the marijuana grow pots already in place when officers arrived to inspect. (The Willits News)

Water board fines landowner \$56,000 by pot grow damage

The North Coast Regional Water Quality Control Board announced last week property owner Joung Min Yi had agreed to pay \$56,404 in penalties for discharging sediment from his property into Outlet Creek and the Eel River. These penalties are in addition to the required restoration of the property located about 7 air miles north of Willits at 29980 and 300100 North Highway 101.

The site was discovered following a citizen's complaint in July 2011 involving heavy equipment operations, tree felling and the movement of large amounts of earthen materials. CalFire officers visited the site and confirmed the violations of California Forest Practice laws were occurring.



Unstable fill slopes along the .7 acre grow pad. (The Willits News)

An inspection team from the Mendocino County Sheriff's Office, CalFire and the North Coast Regional Water Quality Control Board, California Department of Fish and Game, an agent of the California Geological Survey, Air Quality Management District and Mendocino County Code Enforcement arrived at the site on July 8, 2011.

The property was being managed, according to the inspection report, by Jason Brant Gregg of Redwood Valley and Anastacio Arturo Payan of San Francisco for a collected license issued to Payan by the Mendocino County 9.31 (marijuana cultivation regulations). At the time, the inspection reports stated, "we understand that the sheriff's department had signed off on this site certifying with the 9.31.110 ordinance."

The inspection showed the access road was newly constructed on a 25-30 percent grade. A 1.8 acre earthen pad had been scalped out of one area and was in the process of being prepped for marijuana cultivation when inspectors arrived. Some of this area had been left unconsolidated slopes of 90 percent and involved the excavation of 15,000 cubic yards of fill.

A second pad of about .7 acres involving about 2,500 cubic yards of fill was also found. Parts of this pad had 80 percent slopes on the unconsolidated slopes. Aerial photos of the area showed a much smaller pad in this second location was present since the 1980s.

The inspectors found substantial evidence of soil, debris, branches, bark and slash had been pushed into water courses in the area.

Following the inspection, Yi received an emergency cleanup and abatement order in August 2011 requiring him to remove and stabilize the earthen fill areas, the restoration and stabilization of earthen materials and woody debris along access roads, to provide a detailed emergency and monitoring plan. The plans had to include at least a five year monitoring program.

In October 2011, Yi received a notice of violation from the water board for failure to submit a timely emergency plan. Yi appealed the notice of violation and submitted his emergency plan in December 2011.

During the eight inspections by the water board between September 2011 and December 2011 inspectors found someone had dumped out 5,000 gallons from water tanks into watercourses causing substantial amounts of sediment to accumulate in a stream. On Nov. 4, 2011 as much as a foot of sediment had accumulated in more than half a mile of streambed below the site. Several more sediment plumes were noted through the winter. Yi received a second notice of violation from the water board after failing to plant trees along the exposed areas as promised.

The water board recommended a penalty of \$56,090 for failing to comply with the cleanup requirements. The maximum it could have levied, according to the notice of violation, was \$171,090 and the minimum was \$28,050.

Auto Black Box Greenhouse System 20'x52' - \$6000 (Redding/Trinity)



***Auto Black Box Greenhouse System 20'x52' -
\$6000 (Redding/Trinity)***



Emerald Kingdom Greenhouse presents.....Fully automatic black box greenhouse black out system Flower all summer!!! 20'Wide 10'High, 52'Long * 4' Hoop spacing * 5 Purlins *3 ply woven greenhouse film or string reinforced * Manual roll up sides * End wall with 8'x8' tractor access door *Fully automatic black box system with timer. Just set and go! No more pulling Tarp! * 200 Watts power AC or DC, 24v dc, easily use 2 car batteries and trickle solar charger

1-5 Units.....\$6,000 each
5-10Units.....\$5,500 each

These structures are designed and made in the Emerald Kingdom.
We are located in Weaverville, California and have a demo model available to check out.

Installation Available.....530-215-5670

D-1