



Keeping Northwest California wild since 1977

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*Transmitted via electronic mail*

Forest Supervisor  
Mendocino National Forest  
825 N. Humboldt Ave.  
Willows, CA 95988  
Tel: (530) 934-3316  
Fax: (530) 934-7384  
Email: [mailroom\\_r5\\_mendocino@fs.fed.us](mailto:mailroom_r5_mendocino@fs.fed.us)

**RE: Request for supplemental NEPA analysis of the impacts of marijuana cultivation on the Mendocino National Forest**

Dear Responsible Official,

The Environmental Protection Information Center (“EPIC”) formally requests that the United States Forest Service (“Forest Service”) immediately initiate analysis of the impacts of marijuana (*Cannabis sp.*) cultivation on the Mendocino National Forest. This letter sets forth the legal obligations of the Forest Service in the face of new information about environmental impacts not previously considered by the agencies.

**Introduction**

The Forest Service Region 5 office recently released a statement concerning the various impacts associated with the cultivation of marijuana on public lands and warning visitors to be cautious while visiting national forests.<sup>1</sup> The regional office summed up the impacts as:

The disturbances that marijuana cultivation makes on natural resources causes extensive and long-term damage to ecosystems and impacts the supplies of public drinking water for hundreds of miles. Growers clear native vegetation before planting and sometimes use miles of black plastic tubing to transport large volumes of water from creeks that are often dammed for irrigation. The use of banned herbicides and pesticides by marijuana

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<sup>1</sup> Region 5 News Release available at: <http://www.fs.fed.us/r5/news/2011/BeSafeonNationalForests.shtml>

growers kill wildlife and competing vegetation. This loss of vegetation allows rain water to erode the soil and wash poisons, human waste, and trash from the grow sites into streams and rivers.<sup>2</sup>

In a Forest Service interview Regional Forester Randy Moore stated:

And also, there's a huge danger associated with the herbicides and pesticides that are used to grow this illegal marijuana. We also have an issue with natural resource damages out there, such as stream diversions, damage to vegetation, sometimes a permanent loss of vegetation on some of these sites. We also have animals that are being killed. Just recently we found a ringtail cat that had been killed, and that's an endangered species. And they also leave trash such as propane tanks which can cause an explosion should a fire happen to run across. And we have a tremendous expense of hauling the trash out. And so, the public should be concerned because there's a lot of hazards associated with illegal marijuana growing.<sup>3</sup>

The National Drug Intelligence Center ("NDIC") has released assessments of the impacts of domestic cannabis cultivation in 2007 and 2009.<sup>4</sup> These assessments show that a significant increase in marijuana cultivation has taken place on the Mendocino National Forest over the past several years, and that the environmental impacts are severe and widespread.

### **Requirements for Supplemental NEPA Analysis**

A federal agency has a "continuing obligation" to gather and evaluate new information relevant to the environmental impact of its actions under NEPA. *See Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1023-24 (9th Cir. 1980) (citing 42 U.S.C. 4332(2)(A), (B)); *Essex County Preservation Ass'n v. Campbell*, 536 F.2d 956, 960-61 (1st Cir. 1976); *Society for Animal Rights, Inc. v. Schlesinger*, 512 F.2d 915, 917-18 (D.C. Cir. 1975)). As the Ninth Circuit has explained, "an agency that has prepared an EIS cannot simply rest on the original document. The agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a "hard look" at the environmental effects of [its] planned action, even after a proposal has received initial approval." *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557-58 (9th Cir. 2000) (quoting *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 373-74 (1989)). New circumstances and information that come to light after a decision require the agency to issue supplemental NEPA analysis in an EA or an EIS under the CEQ regulations if this information is relevant to environmental concerns and bears on the proposed action or its impacts. *See* 40 C.F.R. § 1502.9(c)(1)(ii); *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 372 (1989); *see also Sierra Club v. Bosworth*, 465 F.Supp.2d 931 (N.D. Cal. 2006) (because the Forest Service bears a continuing duty under NEPA, the Sequoia National Forest was required to supplement its NEPA analysis because of significant new circumstances and information related to Pacific Fisher).

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<sup>2</sup> Id.

<sup>3</sup> Transcript of U.S. Forest Service, Region 5: Forest Focus - Episode 5. Marijuana: Cultivation and Eradication on California's National Forests, available at: <http://www.fs.fed.us/r5/podcasts/marijuana/transcript5.php>

<sup>4</sup> NDIC 2007, available at: <http://www.justice.gov/ndic/pubs22/22486/index.htm#Contents>; NDIC 2009, available at: <http://www.justice.gov/ndic/pubs37/37035/index.htm>

## Significant New Information

As set forth below, significant new information surrounding the impacts of marijuana cultivation on the Mendocino National Forest requires the Forest Service to take a “hard look” at the environmental consequences of cultivation in the context of the Mendocino National Forest Land and Resource Management Plan (“Forest Plan”). The information below is not exhaustive, but it certainly constitutes enough information to form the basis for a new analysis by the Forest Service. This new information along with information already on file with the Forest Service counsels the Forest Service to immediately prepare a supplemental EIS to the Forest Plan.

## Terrestrial Impacts of Marijuana Cultivation

- Clearing of vegetation

Forest Service officials, local environmental groups and law enforcement have documented extensive clearing of vegetation on the Mendocino National Forest. See attached map showing cultivation areas documented by volunteer clean-up crews.

- Chemical applications

Just like other industrial agriculture, chemicals are used on cannabis plants on national forests. Some estimates of the actual amounts of chemicals suggest that an average cultivation site of about 5 acres and 7,000 plants can contain 20 pounds of rat poison, 30 bags of fertilizer, plant growth hormones, insecticides, herbicides, fungicides, and a variety of other chemical inputs.

- Direct mortality to wildlife

Wildlife is impacted by cannabis cultivation on national forests through direct mortality. Researchers have documented mortality to Pacific fisher (*Martes pennanti*) as a result of anticoagulant rodenticides applied on national forests, likely introduced through marijuana cultivation.<sup>5</sup> The fisher is a federal candidate for listing under the Endangered Species Act (“ESA”). In addition, these same rat poisons pose a serious threat to the ESA-listed, threatened northern spotted owl (*Strix occidentalis caurina*) as they prey on rodent species that come in contact with marijuana cultivation areas.

## Aquatic Impacts of Marijuana Cultivation

- Dewatering springs, streams and rivers

The cultivation sites documented on the Mendocino National Forest have extensive irrigation systems and water impoundments. The net effect of thousands of plants is significant dewatering of springs, streams and rivers, including designated Wild and Scenic Rivers, the Eel and Black Butte Rivers. The Mendocino National Forest is mandated by Congress to develop a river

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<sup>5</sup> See Sierra Nevada Adaptive Management Project (SNAMP) – Fisher Team fact sheet on anticoagulant rodenticides, available at: [http://snamp.cnr.berkeley.edu/static/documents/2011/04/25/AR\\_Overview.pdf](http://snamp.cnr.berkeley.edu/static/documents/2011/04/25/AR_Overview.pdf)

management plan for these wild and scenic rivers.

- Impacts to aquatic species

Anadromous and resident fish species are negatively impacted by marijuana cultivation because of dewatering and pollution, including ESA-listed steelhead trout (*Oncorhynchus mykiss*). In particular, summer-run steelhead must hold over in deep pools in the dry season, before spawning in the late-fall. This critically imperiled population of summer steelhead in the Middle Fork Eel River and its tributaries are on the brink of extinction, and suffer from dewatering and pollution as a result of marijuana cultivation.

- Water pollution

The fertilizers and other chemicals used in growing cannabis on national forests runoff into nearby streams and rivers, seriously impacting water quality. Coupled with low flows and higher temperatures, the pollution from cultivation sites on national forests negatively impact water quality.

## Conclusion

We hope that this letter along with the attached documentation will prompt the Forest Service to immediately begin to disclose and analyze the environmental impacts of marijuana cultivation on the Mendocino National Forest. If you have any questions about this letter, please contact me directly at (707) 822-7711. I look forward to hearing from you regarding this matter.

Sincerely,



Andrew J. Orahoske  
Conservation Director

Environmental Protection Information Center  
145 G Street, Ste. A  
Arcata, California 95521  
Tel: (707) 822-7711  
[andrew@wildcalifornia.org](mailto:andrew@wildcalifornia.org)