

NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD

EX PARTE DISCLOSURE REQUIREMENTS FOR PENDING GENERAL PERMITS

The prohibition against ex parte communications no longer applies to general waste discharge requirements (including NPDES permits), general waivers and general Clean Water Act section 401 water quality certifications. A “general order” does not name specific dischargers, but instead allows eligible dischargers to enroll. The following information will help the public comply with statutory disclosure requirements. For more information, see Water Code section 13287 and http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

Must I disclose ex parte communications with board members regarding pending general orders?

You must provide written disclosure if you are in one of these categories:

- Potential enrollees (including their representatives or employees)
- Persons with a financial interest (including their representatives or employees). For a definition of “financial interest,” consult the Political Reform Act (Gov. Code, § 87100 et seq.) and implementing regulations (Cal. Code of Regs., tit. 2, § 18700 et seq.), or the Fair Political Practices Commission website (<http://www.fppc.ca.gov/index.php?id=51>).
- Representatives acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association

What must I disclose?

The attached form lists the information that must be disclosed to document a meeting, telephone call or other conversation. For written communications, a complete copy of the letter or email with all attachments is adequate.

When is the disclosure due?

Water Board staff must receive the disclosure within 7 working days after the board member receives the communication (generally, the date of a phone call or meeting with a board member).

Who must receive my disclosure documents?

Unless the board member(s) provided you with a different contact person, please send your materials to:

David Leland, Division Chief
david.leland@waterboards.ca.gov
(707) 576-2069

What will the Water Board do with my disclosure?

The Water Board is required to post the disclosure on its website and to distribute it via any electronic distribution list for the proposed order. There is no requirement to distribute the disclosure to board members or to prepare responses. If you want to submit written comments or evidence on a proposed general order, you must provide the comments or evidence following the procedure and timelines provided in the notice for the board’s proceeding.

May other interested persons respond to a disclosure notice?

The Water Code does not require that interested persons be allowed to respond to disclosure notices. Any such responses should be included in formal comments submitted during the order's written comment period, included in oral comments at the hearing, or both.

NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD

**DISCLOSURE FORM
EX PARTE COMMUNICATIONS REGARDING PENDING GENERAL ORDERS**

*Note: This form is intended to assist the public in providing the disclosure required by law. It is designed to document meetings and phone calls. Written communications may be disclosed by providing a complete copy of the written document, with attachments. Unless the board member(s) provided you with a different contact person, please send your materials to: david.leland@waterboards.ca.gov
Use of this form is not mandatory.*

1. Pending General Order that the communication concerned: Draft Waiver - Marijuana

2. Name, title and contact information of person completing this form:

Note: Contact information is not mandatory, but will allow the Water Board to assist you if additional information is required. If your contact information includes your personal residence address, personal telephone number or personal email address, please use a separate sheet of paper if you do not want that information posted on our website. However, this information may be provided to members of the public under the Public Records Act. Michael Green, president, Fresno Cannabis Association; 559-900-6848.

3. Date of meeting, phone call or other communication: July 29, 2015

Time: 9 a.m.

Location: Lakeport, CA

4. Type of communication (written, oral or both): Both

5. Names of all participants in the communication, including all board members who participated: Michael Green; Gregory Giusti, North Coast Regional WQCB member.

6. Name of person(s) who initiated the communication: Michael Green

7. Describe the communication and the content of the communication. *Include a brief list or summary of topics discussed at the meeting, any legal or policy positions advocated at the meeting, any factual matters discussed, and any other disclosure you believe relevant. The Office of Chief Counsel recommends that any persons requesting an ex parte meeting prepare an agenda to make it easier to document the discussion properly. Attach additional pages, if necessary.*

Topics: Proper scope of proposed regulations (site-specific/region/statewide); Initial Study and lack of substantial evidence supporting the Mitigated Negative Declaration; lack of baseline analysis or inventory of cultivation sites; failure to consider indoor cultivation in North Coast region and/or potential for increased displaced cultivation outside Basin; enforcement tactics; Best Management Practices; request to conduct full Environmental Impact Report.

8. Attach a copy of handouts, PowerPoint presentations and other materials any person used or distributed at the meeting. If you have electronic copies, please email them to facilitate web posting.



Fresno Cannabis Association

Support and advocacy for Fresno County and the Central Valley

June 8, 2015

To: North Coast Regional Water Quality Control Board members and staff

From: Michael S. Green, president
Fresno Cannabis Association

Re: Adoption of General Waiver of Waste Discharge Requirements and a General Water Quality Certification for Discharges of Waste from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region.

The Fresno Cannabis Association is an unincorporated association representing medical cannabis patients and collectives in Fresno County and its incorporated cities. The following comments are submitted in opposition to the adoption of the draft waiver in its current form. While cannabis cultivation can and does have site-specific environmental impacts, the proposed regulations are overbroad and would primarily be enforced in conjunction with state and local law enforcement.

Because of the sheer scale and complexity of the issues involved, we urge a statewide review of cannabis cultivation practices and related environmental and enforcement issues, rather than a unilateral action by the North Coast water board that could have direct and indirect consequences that are unforeseen. Among other concerns, the proposed action could set precedents affecting cannabis cultivators under the authority of the Central Valley Regional Water Quality Control Board, including those residing in Fresno County and the San Joaquin Valley.

The following comments are in response to specific elements of the draft waiver.

Overview

1. The proposed findings are based on anecdotal evidence, at best, and sheer speculation at worst. This can and does cast cannabis cultivation in such a negative light such that it can be distinguished from other forms of agricultural activity occurring within the same watersheds. Examples: "The North Coast Region is *inundated* with marijuana cultivation in headwaters and main river systems, with active, developed sites in steep and rugged terrain"; "land area under cultivation increasing *exponentially* over the past decade." (emphasis added). We do not question the fact that cannabis cultivation has grown incrementally in past years, both in the North Coast region and in other areas of the state. However, no baseline data is provided that would support such expansive findings. We also note the Initial Study lacks any quantifiable baseline data regarding the number and location of current cultivation sites.

2. The proposed regulations do not apply to operations or grows of no more than 12 immature or 6 mature plants and where there is no potential for discharge of waste. While this is, perhaps, reflective of existing state law regarding personal cultivation by qualified patients, no substantial evidence is provided that per-parcel exemptions for the threshold number of plants would not result in potential site-specific discharges, nor that the cultivation of small numbers of plants could not have cumulatively considerable impacts when viewed in the aggregate in a region that is "inundated" with grow sites.

Anecdotally, a wide range of existing cultivation practices has been observed within the North Region and the Central Valley, including families and friends with two or more patients living on the same parcel and larger collectives or collective-supplying growers. We don't object to provision for personal cultivation that will not require a discharge waiver, but a more flexible exemption should be allowed for personal cultivation in multi-grower households. The exemption should be based on a rational baseline analysis that takes into account the full scope of existing personal and commercial cultivation practices.

3. The sheer scope of the proposed regulations is troubling, especially as it applies to non-cultivating landowners who could be subject to sanction for violations caused by their tenants. (Vallco Park, State Water Board WQO 86-18.) We have seen ample evidence of this principle in action in Fresno County, where landowners are often fined tens or hundreds of thousands of dollars for violations of the county's cultivation ban, regardless of whether they actually caused or contributed to the violation. A summary of these actions can be viewed at <http://fresnocannabis.org/fresno-county/cannabis-fine-appeals/>.

Because landowners represent the "deep pockets" in any enforcement action, and because of the Vallco Park decision cited above, it is reasonable to assume that property owners will face the lion's share of legal exposure when unwitting or unscrupulous tenants fail to pay penalties for discharge violations. It is also reasonable to assume that many of the problems observed within the North Coast region arise from tenant growers rather than landowners. The proposed penalties may seek to stem illicit discharges, but they very likely will miss the actual target when applied to non-resident landowners. Because no baseline analysis has been conducted, we don't know how many land parcels are affected by the proposed regulations, nor the mix between rental properties and owner-occupied properties.

4. The draft waiver covers a large number of activities attributed to marijuana cultivation, but the exact same activities apparently do not require a waiver when medical marijuana is not involved. No legal or environmental justification is provided for this disparate treatment, raising due-process concerns.

More measured and site-specific approaches have been taken in the North Coast region, including proposed regulations for Easter lily bulb cultivation in the Smith River Plain.

http://www.waterboards.ca.gov/northcoast/water_issues/programs/agricultural_lands/pdf/150330/150330_WaterBoard_SmithRPlainMonitoringFactSheet.pdf

Discharges of waste associated with vineyards and orchards in the North Coast Region are covered by General WDRs and/or General Conditional Waiver of WDRs.

http://www.waterboards.ca.gov/northcoast/water_issues/programs/agricultural_lands/

Discharges of waste associated with grazing activities in the State of California are being developed on a statewide basis, not a regional one. The Grazing Regulatory Action Project "aims to facilitate efficiency and statewide consistency in developing and implementing strategies to meet its goal, while at the same time accounting for regional differences in hydrology, topography, climate and land use."

http://www.waterboards.ca.gov/water_issues/programs/nps/grap.shtml

The pertinent question that arises is this: Why is the North Coast water board considering regional regulations, rather than general waivers, site-specific regulations or regulations that apply statewide? Our association supports the latter approach as being the most likely to result in consistent regulations.

5. The draft waiver claims "Most of the potential water quality impacts from the listed activities are associated with erosion and sediment delivery and/or changes to riparian systems that may reduce shade and affect water temperatures, over allocation of water sources, and chemical/pollutant discharges from areas under cultivation or material/waste storage areas." This generalized statement is not accompanied by any baseline analysis of general and site-specific cultivation activities, nor is any effort made to distinguish such impacts from those already covered by general agricultural waivers. This begs the question of why regional, cannabis-specific regulations are needed vs. potentially less intrusive forms of regulation that could be applied on a site-specific and/or statewide basis.

8. The proposed order "does not authorize discharges of waste associated with any new development of sites for marijuana cultivation or related activities." The meaning of this statement is unclear, and could be construed as a moratorium of sorts for new cannabis cultivation sites within the North Coast region. Because no baseline study has been provided, there is no inventory of existing cultivation sites that can be used to determine whether "new development" is occurring, nor is any statutory authority cited that would allow the water board to bar such development.

Additional clarification is required to distinguish "construction" activities from cultivation activities. The draft order should clearly distinguish between large-scale activities greater than one acre in size, and those more closely and typically associated with cannabis cultivation and other agricultural activities, by providing an explicit exemption for "Disturbances to land surfaces solely related to agricultural operations such as disking, harrowing, terracing and leveling, and soil preparation." Requiring cannabis farmers to obtain construction permits by default is expensive and overbroad.

15. The proposed order purports to "address sediment and temperature impairments" without the benefit of any baseline data or monitoring program that shows the number, frequency and severity of such impairments that may be attributed directly to medical cannabis cultivation. This is not to say that such impairments have not been observed anecdotally on a site-specific basis, but without more substantial evidence the proposed order is a solution in search of a problem that may not be as serious or as widespread as claimed.

16. The proposed order claims, "It is evident that the over-diversion of surface water for marijuana cultivation continues to impact instream beneficial uses." Such claim is not self-evident, however. Nor is it self-evident that water diversion is a problem unique to marijuana cultivation; arguably, the very same problem exists for general agriculture activities that are already covered by general waivers. A special discharge waiver for cannabis cultivators is not required to gather information on water rights.

17. A three-tiered approach is proposed for the waiver program, based on criteria including defined cultivation areas, slope and proximity to surface water. No evidence is provided to support the distinctions between tiers, nor their purported environmental benefits of such arbitrary classifications. No baseline inventory of land parcels within the region is provided to determine tier classifications; hence, the assumption is that such determinations will be made on a site-specific, case-by-case basis.

Tier I "dischargers" are barred from using surface water from May 15 through October 31, regardless of their rights to such surface water. They also are subject to "self-certification" and administrative penalties for violations. If we are to believe that Tier I growers pose minimal risk, as claimed, then the proposed certifications, fees and penalties are an overbroad application of the water board's authority. Tier I dischargers can further be bumped to Tier 2 for alleged failure to meet "standard conditions."

Tier 2 dischargers face an additional requirement to prepare a water resource protection plan. Agricultural dischargers on parcels with the same characteristics face no such requirement. Absent any showing or substantial evidence that marijuana cultivation is more likely to impact water quality than similar agricultural activities on similar land parcels, cannabis cultivators will be denied equal protection under the law by the arbitrary and capricious application of the proposed order.

Tier 3 dischargers must develop and implement a cleanup and restoration plan, based on vague and overbroad criteria that include "current or past land development/management activities that have resulted in a discharge or threatened discharge in violation of water quality standards." Since no baseline study of cannabis-specific land development and management has been conducted for the 19,000-plus square miles of land parcels covered by the proposed order, one is left to wonder exactly how past cultivation activities and "threatened" discharges will be gauged, and by whom. Although not stated explicitly in the proposed order, it is reasonable to assume that state and local law enforcement agencies will take the lead on providing surveillance and other intelligence on "historical" grow sites, including nuisance grow sites most commonly associated with water quality violations. Additional authority to apply tiering to individual parcels is granted to unspecified "certified third parties."

19. A good indicator of how confusing the proposed waiver system is can be found here: "Plans can range from a simple description of the management practices to be implemented, to comprehensive descriptions of existing sources of waste discharge and elevated water temperatures, management practices employed to control the sources, and a monitoring and reporting program to document actions taken to control the sources and the effectiveness of such actions."

In other words, you can be a Tier 1 unless conditions exist to make you a Tier 2 or Tier 3, as determined by the field inspector or third-party inspector, and the required management and/or cleanup plans can be as simple or as complex as those same investigators deem appropriate. By any measure, this fails to give cannabis cultivators, landowners and the public at large any reasonable ability to determine the impact of the proposed regulations on their individual properties before the regulations are enacted. Due diligence and a sense of fair play would suggest more time for stakeholder input is needed.

20. The same caveat can and should be applied to the imposition of Best Management Practices. The nexus between the desired benefits of the proposed order and the optional/mandatory BMPs is not established by any baseline analysis that would support their applicability to cannabis cultivation, or their utility in mitigating the impacts of such cultivation. The same BMPs are not necessarily required to be followed by other agricultural dischargers within the same region, raising legitimate questions of equal treatment of law.

21. The proposed order envisions the use of third-party certification companies with rather expansive powers, including tracking of names, collection of fees and development and implementation of water quality monitoring programs. This necessarily involves, at a minimum, determination of qualified patient status under Proposition 215. Whether by the water board or third parties, the medical privacy rights of cultivation patients must be respected, and the board's data-collection authority is ill-defined.

22. Although the proposed order envisions "coordination and cooperation" with cultivators, the reality is that the water board and its staff will coordinate with state and local law enforcement agencies to identify nuisance grow sites and prioritize enforcement actions. An unannounced enforcement action along the Eel River watershed utilized this approach.

http://www.swrcb.ca.gov/press_room/press_releases/2015/pr012215_sproul_creek.pdf

http://www.swrcb.ca.gov/water_issues/programs/enforcement/docs/a_big_stick.pdf

<http://www.pressdemocrat.com/news/3451589-181/state-seeks-water-rules-for>

Such "compliance checks" are purported to be voluntary, but the frequent use of property inspection warrants is also clearly envisioned in cases where growers decline to "volunteer" to be inspected. Therefore, while the overall theme of the proposed regulations are administrative in nature, in practice they will be applied using a mix of civil and/or criminal enforcement. The ability of the water board to enforce its own regulations without relying heavily on law enforcement data and staff support is highly questionable given the extensive commingling of state-compliant and illicit cultivation in the region.

34. The proposed inspection fees are onerous and excessive, bearing little to no relation to the actual cost of providing inspection services, whether by the agency or third parties. These minimum costs will be further increased by unspecified but likely substantial costs for mandatory reporting and monitoring programs. As such, the fees will undermine and defeat any and all attempts at "self-certification" and "voluntary compliance."

The inspection fees are documented here:

<http://www.oal.ca.gov/res/docs/pdf/emergencies/recent%20action,%20moved%20emergencies/2014-1017-01EFP.pdf>

\$500 - Less than 1/4 acre

\$2,500 - 1/4 acre to 5 acres.

\$10,000 - Greater than 5 acres.

36. The Regional Water Board's proposed additional findings are not supported by substantial evidence. There is no evidence that new discharges will not occur under the proposed order, especially when a concurrent Board finding is that cannabis cultivation - both state-compliant and illicit - is rampant. Further, there is no evidence that the Board or staff has considered the indirect consequences of the proposed order, including substantially increased indoor cultivation activities within the Basin and/or the displacement of existing outdoor cultivation activities to adjoining water basins and regions. This latter concern is especially critical given the large geographical footprint of the proposed regulations, and the observance of similar water-quality issues in regions where the proposed rules will not apply.

37. Adoption of a Mitigated Negative Declaration (MND) is not appropriate where substantial evidence exists of potentially significant environmental impacts and/or where the Board's findings are not supported by substantial evidence. Despite the good intentions that have given rise to the proposed regulations, due diligence requires additional study and the preparation of an Environmental Impact Report, which will more fully study project alternatives and their potential impacts. Additional comments regarding the Initial Study and its proposed MND will be provided in a separate letter.

We very much appreciate the leadership of the Board and its staff on this important issue. However, more work is needed to ensure the proposed rules will be evenly and fairly applied in a manner that yields positive and consistent results. That scope of work includes additional environmental review.

Thank you for your consideration of these comments.

Sincerely,

Michael S. Green, president
Fresno Cannabis Association



Fresno Cannabis Association

Support and advocacy for Fresno County and the Central Valley

June 8, 2015

To: North Coast Regional Water Quality Control Board members and staff

From: Michael S. Green, president
Fresno Cannabis Association

Re: Initial Study -- Adoption of General Waiver of Waste Discharge Requirements and a General Water Quality Certification for Discharges of Waste from Marijuana Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region.

The Fresno Cannabis Association is an unincorporated association representing medical cannabis patients and collectives in Fresno County and its incorporated cities. The following comments are submitted regarding the Initial Study and in opposition to the proposed Mitigated Negative Declaration.

Because of the sheer scope of the proposed regulations, and the lack of substantial evidence submitted in support of the proposed Mitigated Negative Declaration, we request the North Coast board to delay or forgo the recommended actions and to instead initiate a study of the proposed regulations as they would apply statewide. Such action would be consistent with the statewide approach to grazing rules.

Should the North Coast water board wish to pursue these regulations on a regional basis, there is substantial evidence in the available record that the proposed regulations will have a substantial impact on the environment and/or that they will have cumulatively considerable environmental impacts, both within the North Coast region and in other regions where displaced cultivation activities may occur. Among other concerns is whether the proposed rules will substantially increase indoor cultivation within the Basin by otherwise state-compliant growers wishing to avoid application of the new rules. Such a wholesale shift in cultivation patterns can and will create environmental impacts of their own.

Where there is substantial evidence supporting a "fair argument" of potential environmental impacts, the agency is required by statute and California case law to prepare an Environmental Impact Report. We therefore respectfully request the Regional Water Board to authorize preparation of an EIR.

AGRICULTURAL AND FORESTRY RESOURCES

The Initial Study claims that "The Order does not convert farmland to non-agricultural uses, result in the loss of forest land or conversion of forest land to non-forest use, or involve other changes in the existing environment which, due to their location or nature, could result in conversion of farmland, to non-agricultural use or conversion of forest land to non-forest use."

The Initial Study does not consider the possibility that the sheer scope and breadth of the proposed regulations may prompt some growers to relocate to forest lands that fall outside of the Water Board's regulatory authority.

Although cannabis cultivation on public lands is illegal in virtually all cases, the Initial Study must consider the previously documented existence of widespread cultivation on public lands, as well as the likelihood that increased enforcement on private lands within the Basin could exacerbate that problem. The North Coast basin encompasses large swaths of National Forest land, including some or all of the Six Rivers, Shasta-Trinity, Mendocino and Klamath national forests.

No baseline study or other substantial evidence has been provided regarding the number and location of land parcels where cannabis cultivation is occurring, whether by state-compliant or illicit growers. Thus, the finding of "less than significant" impact on forest land is speculative and conclusory.

AIR QUALITY

No analysis on the possible air quality impacts of the proposed regulations has been performed, and there is no evidence any attempt was even made to identify whether any such impacts could exist.

Outdoor cultivation remains the safest and most affordable means of cultivation available, as well as the one with the smallest carbon footprint. It is reasonable to assume that enforcement of the Regional Water Board's regulations will mainly target outdoor sites, since cultivation at indoor locations is much more difficult to discover and investigate. Indeed, the proposed rules fail to address indoor cultivation at all, even though such cultivation can result in discharges to waste and stormwater systems.

Cannabis cultivation, both legal and illegal, has been endemic in the Basin for decades. The direct and foreseeable result of the proposed rules is not a reduction in the total number of cannabis plants grown within the Basin, but rather a shift of existing outdoor cultivation sites to indoor locations. Because no baseline analysis has been provided regarding the number of outdoor cultivation sites affected by the proposed rules, the full scope of the potential shift is unknown. However, the Board findings state that cannabis cultivation has grown dramatically, even "exponentially," so the impact is likely significant.

A 2011 study of energy consumption related to indoor cannabis cultivation was compiled by Evan Mills, an energy analyst and staff scientist at the Lawrence Berkeley National Laboratory. "In California, the top producing state (of marijuana), indoor cultivation is responsible for about 3% of all electricity use or 8% of household use This corresponds to the electricity use of 1 million average California homes, greenhouse-gas emissions equal to those from 1 million average cars, and energy expenditures of \$3 billion per year." The full report is at <http://evan-mills.com/energy-associates/Indoor.html>.

As further described in the Mills report, energy uses commonly associated with indoor cannabis cultivation include "high-intensity lighting, dehumidification to remove water vapor and avoid mold formation, space heating or cooling during non-illuminated periods and drying, pre-heating of irrigation water, generation of carbon dioxide by burning fossil fuel, and ventilation and air-conditioning to remove waste heat. Substantial energy inefficiencies arise from air cleaning, noise and odor

suppression, and inefficient electric generators used to avoid conspicuous utility bills. So-called “grow houses” – residential buildings converted for Cannabis production – can contain 50,000 to 100,000 W of installed lighting power (Brady, 2004). Much larger facilities are also used.” Increased power generation to meet the demand created by indoor growers releases more air pollutants, including ozone precursor chemicals.

Beyond the possible impacts of increased indoor cultivation, the Initial Study fails to consider the possible air quality impacts of its own increased enforcement efforts. These could include vehicle-miles traveled by Regional Water Board staff, third-party inspectors and/or law enforcement task forces seeking to conduct compliance checks on thousands of land parcels within the Basin. To the extent that the Water Board seeks to conduct surveillance and/or enforcement using helicopters and aircraft, those vehicle-miles can and will create pollutants and greenhouse gases affecting the general environment.

Further, added vehicle trips on dirt roads in rural areas, and/or the frequent use of helicopters during low-level surveillance and/or landings and take-offs at inspections and cleanup operations, can substantially increase suspended particulate matter (PM10) within localized areas. The entire North Coast Air Basin is currently designated as nonattainment for the State 24-hour PM10 standard.

<http://www.ncuaqmd.org/index.php?page=northcoast.airbasin>

The Initial Study fails to consider or address whether the proposed regulations would result in a cumulatively considerable net increase in a criteria pollutant for which the region is in non-attainment under federal and/or state ambient air quality standards, namely, suspended particulate matter (PM10).

GREENHOUSE GAS GENERATION

No analysis on the possible impacts of the proposed regulations on greenhouse gas generation has been performed, and there is no evidence any attempt was made to identify whether such potential impacts.

There is substantial evidence in the record that the proposed regulations would result in a substantial increase in vehicle miles traveled by sheriff's deputies, county code enforcement officers, Water Board staff and/or third-party inspectors attempting to enforce the proposed regulations, and also to abate and/or clean up cultivation sites found in violation. There is substantial evidence that greenhouse gas generation also may be impacted by the thousands of qualified patients who are unable (or simply unwilling) to fully comply with the Regional Water Board's new regulations, and who will thereupon displace or alter their cultivation practices.

Among the reasonably foreseeable consequences of the new rules is a substantial increase in indoor cultivation, which requires an electrical supply and/or off-the-grid electrical generators powered by fossil fuels. This possibility is not considered in the Initial Study, although it does allow that some short-term generation of GHGs will occur during cleanup operations. Even so, no evidence supports the proposition that, "Even without temporally staggered remediation/cleanup/restoration activities, the impact of greenhouse gas emissions on a watershed-wide scale will be less than significant." The massive geographical scope of the proposed regulations (watershed-wide) and the wide range of activities covered provide ample evidence that GHG generation is not only possible, but likely.

HAZARDS AND HAZARDOUS MATERIALS

The Initial Study acknowledges hazardous materials including petroleum-based products, pesticides and other chemicals (including herbicides and plant fertilizers). Interestingly, the study focuses entirely on the issue as it pertains to outdoor cultivation. How those same materials might well be present at

indoor cultivation sites is not addressed, nor is the issue of potential discharges of hazardous materials to waste and stormwater systems.

A broader view is required here, especially as it applies to potential discharges of hazardous materials to groundwater and municipal water systems. While the most serious and visible problems may involve large-scale outdoor cultivation operations (as defined in the Water Board's own tiering structure), the proposed regulations fail to consider the possible impacts of all cultivation practices, including indoor. The proposed mitigation measures are half-measures at best; at worst, the emphasis on enforcement against outdoor grows could potentially increase indoor discharges. The finding that the proposed regs would have a "less than significant" impact is unsupported by the evidence cited on this topic.

LAND USE AND PLANNING

The Intial Study does not survey or analyze local zoning ordinances pertaining to cannabis cultivation, even though the proposed regs would apply across 19,000-plus square miles. The North Coast is home to a wide variety of regulatory approaches by local governments that address both personal and collective cultivation activities. It is not acceptable to claim that the proposed regulations do not affect land use activities, because the face of the regulations themselves show that they very clearly do. These activities can include grading, storage of hazardous materials, code enforcement and farming activities protected by "right-to-farm" ordinances. The finding of "no impact" is simply not supported.

UTILITIES AND SERVICE SYSTEMS

The Intial Study makes a "no impact" claim regarding impacts on wastewater treatment, even though "Many of the sites that would be subject to this Order currently have onsite wastewater treatment facilities that are in need of maintenance, and many lack a system entirely." The effects of indoor cultivation on wastewater treatment systems have not been analyzed, nor have the potential impacts of substantially increased indoor cultivation that could result from the enforcement of the Water Board's rules to outdoor gardens.

Many of the same hazardous chemicals noted above can be used for indoor cultivation operations. Where this occurs in areas served by municipal stormwater and wastewater systems, those discharges can and do impact utilities and wastewater treatment systems. Provision for sustainable outdoor cultivation practices may be viewed as a mitigation measure that would lessen the impact of widespread indoor cultivation; however, that possibility was not considered in the Initial Study. Regardless, the "no impact" claim is unsupported by substantial evidence.

Further, the proposed order purports to cover waste plant materials generated during cultivation. This "could cause an increased influx of materials going to local transfer stations and thence to (mostly) out of Region landfills in the short term, but is not expected to occur on a scale that would impact the capacity of landfills accepting waste." This finding runs opposite to the study's claims that marijuana cultivation is increasing by leaps and bounds; if so, the amount of waste is substantial and growing.

MANDATORY FINDINGS OF SIGNIFICANCE

The Initial Study relies on the adoption of mandatory Best Management Practices to mitigate any cumulatively considerable impacts. However, as noted above, the proposed rules focus solely on outdoor cultivation activities and their potential impacts, as do the BMPs. Indoor cultivation is not

addressed in any substantive way, and the likelihood that indoor cultivation will increase substantially when the proposed rules are applied to outdoor gardens is not even considered as a remote possibility.

Put simply, there is no substantial evidence in the Initial Study that the proposed regulations will not have cumulatively considerable impacts upon medical cannabis patients and primary caregivers who cultivate medical cannabis within the Basin, nor that the proposed action will not cause substantial adverse effects on human beings living in the general environment.

Rather, there is substantial evidence in the record that both indoor and outdoor cultivation is common within the Basin, that both types of cultivation can and do have unique carbon footprints and other potential environmental impacts, and that the proposed regulations failed to consider or address whether increased enforcement regarding outdoor cultivation would exacerbate equal or greater problems attributed to indoor cultivation.

Thank you for your consideration of these comments.

Michael S. Green, president
Fresno Cannabis Association