

Congress of the United States
Washington, DC 20515

March 18, 2014

The Honorable Patti B. Saris
Chair
United States Sentencing Commission
One Columbus Circle N.E.
Washington, D.C. 20002-8002

Dear Judge Saris:

We write to thank the Commission for its January 17th request for public comments on the environmental harms caused by illegal drug production and make clear our belief that existing guidelines do not provide sufficient penalties for these offenses. It is our belief that the current guidelines and associated commentary, particularly commentary regarding the assessment of environmental harm caused by the cultivation of marijuana on public lands or while trespassing on private property, do not currently provide adequate penalties or consideration to the destructive, long term damage that illicit drug production operations have on our environment, recreation areas, workplaces, and communities.

Over the past decade, drug cultivation has significantly expanded both geographically and in scale. In rural and remote areas, today's marijuana operations can involve tens of thousands of plants and industrial-scale farming practices. In 2012 alone nearly one million marijuana plants were eradicated from 471 sites on National Forest lands found in 20 states from Hawaii to Virginia. David Ferrell, Director of Law Enforcement and Investigations for the U.S. Forest Service, characterized the impact of these operations, stating that "[m]arijuana cultivation operations create intensely disturbed sites...Growers clear native vegetation before planting and install miles of plastic tubing to transport large volumes of water from creeks for irrigation, which reduces stream flows for fish and aquatic habitat. Overuse of herbicides and pesticides kill competing vegetation and wildlife. Human waste and trash are widespread."

Specialists and law enforcement officials also report large scale landscape alteration including the grading of hill sides and road construction, as well as mass storage of hazardous materials such as oil, diesel, and gas.ⁱ This kind of activity is incredibly expensive for the federal government to remediate,ⁱⁱ undermining significant public and private investment in the landscape. Drug traffickers also directly threaten fragile ecosystems and federally protected wildlife with the environmental degradation they cause.ⁱⁱⁱ

We thank the Commission for its specific attention to the issue of trespass marijuana cultivation on private lands. These drug operations can threaten the well-being and livelihoods of

communities across our nation, particularly those that depend on ranching, farming, and natural resources. They also jeopardize worker safety and the reclamation of abandoned cultivation sites can be both dangerous and expensive for the landowner.

Congress has clearly indicated that harm to the environment is an important consideration in determining the appropriate response to controlled substance offenses. In the 113th Congress, bipartisan legislation was introduced in both the House and Senate to increase sentencing penalties for an individual engaged in environmentally destructive practices while producing a controlled substance. Similar language was included as an amendment to S. 744, the Senate immigration reform bill passed in 2013.

Prior to this, the Methamphetamine Anti-Proliferation Act of 1999^{iv} focused attention on the environmental impacts of methamphetamine production as well as authorized funding for reclamation and remediation. When this issue was revisited in 2005 with the Combat Methamphetamine Epidemic Act,^v the environmental harms caused by methamphetamine production were among the primary concerns discussed.

We urge you to significantly expand the scope of current guidelines so that they adequately address the full breadth of environmental harms caused by drug production operations. The illicit activities associated with trespass marijuana operations, such as stream diversions, are categorically different than the activities associated with possession and are not adequately addressed by §2D1.1 or §2D1.9 of the current guidelines. Amending the guidelines to identify these specific environmental harms would both make the guidelines consistent and ensure that these crimes receive fair consideration in court.

We also encourage the Commission to revise existing guidance on key factors for consideration in assessing environmental harm resulting from illegal marijuana cultivation. The adoption of USSG §2D1.1, comment. (n.18(B)) helped provide clarity in determining whether a methamphetamine or amphetamine offense created a substantial risk of harm to human life or the environment. It is our understanding that courts have regularly consulted these environmental assessment factors during the sentencing process. Expanding their scope to apply to cases involving marijuana cultivation or the production of other controlled substances would ensure that courts are provided with guidance and assistance when making environmental determinations.

Some key factors for the Commission to consider in this process include:

1. The release into the environment or storage of potentially hazardous chemicals such as pesticides, rodenticides, fertilizers, gas or diesel.
2. The diversion, redirection, obstruction, draining, or impoundment of local aquifers, rivers, or bodies of water.
3. The significant removal of vegetation or clear-cutting of timber.
4. Large scale landscape alteration such as the grading of land or the construction of roads.

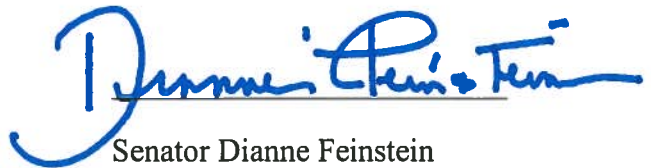
Consultation with key stakeholders from farmers and ranchers to law enforcement, scientists, tribes, and community leaders has made it clear to us that existing guidelines do not address the long-term detrimental threats that the production of controlled substances pose to the environment, health and safety of nearby communities. We urge you to add new emphasis to countering these crimes by amending the relevant penalty guidelines and generating clear standards of assessment.

Thank you for your consideration on this important matter.

Sincerely,



Congressman Jared Huffman



Senator Dianne Feinstein



Congressman Doug LaMalfa



Senator Barbara Boxer



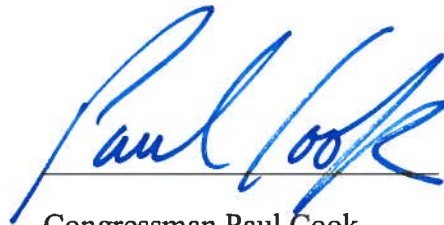
Congressman Mike Thompson



Congressman Sam Farr



Congressman Douglas Lamborn



Congressman Paul Cook

¹ See, for example, attached panel presentation regarding "Environmental Impacts of Marijuana Cultivation in the North Coast" given at the May 2, 2013, North Coast Regional Water Quality Board Meeting.

ⁱ See, for example, attached panel presentation regarding “Environmental Impacts of Marijuana Cultivation in the North Coast” given at the May 2, 2013, North Coast Regional Water Quality Board Meeting.

ⁱⁱ In “Marijuana Cultivation on National Forest System Lands Fact Sheet,” the National Forest Service estimates that reclamation efforts average \$15,000 per cultivation site.

ⁱⁱⁱ See, for example, Thompson, et al., “Impacts of rodenticide and insecticide toxicants from marijuana cultivation sites on fisher survival rates in the Sierra National Forest, California,” *Conservation Letters*, 2013.

^{iv} Signed into law as part of the Children’s Health Act of 2000, Public Law No: 106-310.

^v Signed into law as part of USA PATRIOT Improvement and Reauthorization Act of 2005, Public Law No: 109-177.