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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 753                      **Hearing Date:** April 11, 2023  
**Author:** Caballero  
**Version:** March 20, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Cannabis: water resources*

### HISTORY

**Source:** Rural County Representatives of California

**Prior Legislation:** SB 1426 (Caballero), held in Senate Appropriations 2022  
AB 1138 (Rubio), Ch. 530, Stats. 2021  
SB 427 (Eggman), Ch. 137, Stats. 2021  
Proposition 64, as approved by the voters on November 8, 2016

**Support:** California Groundwater Coalition; California Special Districts Association

**Opposition:** None known

### PURPOSE

*The purpose of this bill is to: 1) make it a felony to plant, cultivate, harvest, dry, or process more than 50 living cannabis plants if specified conditions exist; and 2) add “surface or groundwater” to the existing statute criminalizing planting, cultivating, harvesting, drying, or processing more than six living cannabis plants when the offense resulted in intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources.*

*Existing law* establishes the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of both medicinal cannabis and adult-use cannabis. (Bus. & Prof. Code, §§ 26000 et seq.)

*Existing law* requires that each person under the age of 18 who plants, cultivates, harvests, dries, or processes any cannabis plants is required to complete drug education or counseling and community service, as specified. (Health & Saf. Code, § 11358, subd. (a).)

*Existing law* provides that each person at least 18 years of age but less than 21 years of age who plants, cultivates, harvests, dries, or processes not more than six living cannabis plants is guilty of an infraction and a fine of not more than \$100. (Health & Saf. Code, § 11358, subd. (b).)

*Existing law* provides that the penalty for each person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living cannabis plants is imprisonment in a

county jail for a period of not more than six months or by a fine of not more than \$500, or by both that fine and imprisonment. (Health & Saf. Code, § 11358, subd. (c).)

*Existing law* provides that a person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living cannabis plants, or any part thereof, may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if any of the following conditions exist:

- The person has one or more prior convictions for specified felonies or for an offense requiring sex offender registration.
- The person has two or more prior convictions for planting, cultivating, harvesting, drying, or processing more than six living cannabis plants.
- The offense resulted in any of the following:
  - Illegal diversion of water.
  - Violation of laws related to the discharge of waste.
  - Violation of laws related to polluting waters of the state.
  - Diversion or obstruction of the natural flow of rivers, streams, and lakes.
  - Dumping hazardous substances or other unlawful activity related to hazardous waste.
  - Violations of law related to endangered and threatened species, the Migratory Bird Treaty Act, or the unlawful taking of fish and wildlife.
  - Intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources.(Health & Saf. Code, § 11358, subd. (d).)

*Existing law* provides that a felony punishable pursuant to section 1170, subdivision (h), is punishable by a term of imprisonment in a county jail for 16 months, or 2 or 3 years. (Pen. Code, § 1170, subdivision (h)(1).)

*This bill* adds intentionally or with gross negligence causing substantial environmental harm to surface or ground water to the conditions for which a person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living cannabis plants, or any part thereof, may be punished by imprisonment pursuant to Penal Code section 1170(h).

*This bill* provides that a person 18 years of age or older who plants, cultivates, harvests, dries, or processes more than 50 living cannabis plants, or any part thereof, except as otherwise provided by law, may be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than \$500, or by both fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if the offense involves any of the following:

- A violation of any provision of the Food and Agricultural Code relating to pesticides, as specified.
- Taking or using of water from conveyance or storage facilities without the permission of the owner.
- Extraction or use of groundwater from an unpermitted well, or from a permitted well in excess of any restriction established in the Water Code or by local ordinance.

## COMMENTS

### 1. Need For This Bill

According to the author:

For years, thousands of illicit cannabis growers, primarily in rural areas, have put the health and safety of Californians, wildlife, and our water supplies at risk by engaging in water theft and environmental pollution as part of their operations. In 2020 alone, as much as 36 million liters of water was used for illicit cannabis grow. Illegal grow sites have been found to divert water from sensitive wetlands and rivers, harming sensitive ecosystems. The extensive use of pesticides, nitrates, and rodenticides pollute groundwater supplies and rivers, making the water unfit for drinking and causing harm to wildlife. Because some sites go undetected for years, the potential environmental damage could last generations.

SB 753 addresses the impact of illicit cannabis farms in two ways. First, by clarifying that groundwater is a public resource, and second, by establishing that the theft of groundwater, unauthorized tapping into a water conveyance or storage infrastructure, or digging an unpermitted, illegal well may be punished as a misdemeanor or imprisonment as a felony. Providing deterrents to water theft and groundwater pollution appropriately recognizes the danger these illegal grows pose long-term to both humans, our environment, and wildlife.

### 2. Background

Despite the existence of a legal cannabis industry in the state following the approval of Proposition 64 by the voters in 2016, the illicit cannabis industry persists. One element of the illicit market involves illegal cannabis farms which are often located in rural parts of the state, and have been identified as the most common culprit of water theft. Water is reportedly being unlawfully taken or diverted from rivers, streams, municipal water storage facilities, fire hydrants, farms, homes, and private wells which is exacerbating the limited water supply in the state. A recently published article lays out the issue:

While farmers, ranchers and licensed marijuana growers scramble to obtain water through legal channels, clandestine operations are stealing it or purchasing it from illicit trucks.

In the Sierra Nevada, as many as 4,000 illegal grow sites are operating in Nevada County, according to county estimates. In the Antelope Valley, illegal grows have doubled from 200 last year to 400 today, according to county data, while other estimates put the number in the thousands.

...

Marijuana is not a particularly thirsty crop — using about the same amount of water as a tomato plant — but the drought's severity means that even a modest water diversion can have impacts.

“Most Californians would be shocked and disappointed at the amount of water these unlicensed, illegal grows are using, especially as California suffers from a drought,” Curt Fallin, a federal Drug Enforcement Agency agent, said during a recent news conference. “By our calculation, the illegal grows in Los Angeles, Riverside and San Bernardino counties require an astounding 5.4 million gallons of water a day, every day.”

(Julie Cart, *Thieves are Stealing California’s Scare Water. Where’s It Going? Illegal Marijuana Farms* (May 4, 2022) available at <https://calmatters.org/environment/2021/07/illegal-marijuana-growers-steal-california-water/>)

Although the amount of precipitation the state has received during the current water year has relieved most of the state from drought conditions, concerns regarding water theft or diversion remain due to volatile weather patterns and the fragile nature of the state’s water supply. (National Oceanic and Atmospheric Administration, California Nevada River Forecast Center, *Drought Information* (Mar. 28, 2023) available at <https://www.cnrfc.noaa.gov/droughtInfo.php#localdrought>); Mark Gongloff, *California’s Drought is Over. It’s Water Problems Aren’t* (Mar. 21, 2023) available at [https://www.washingtonpost.com/business/energy/2023/03/21/california-s-drought-is-over-its-water-problems-aren-t/0ab6cff2-c7d9-11ed-9cc5-a58a4f6d84cd\\_story.html](https://www.washingtonpost.com/business/energy/2023/03/21/california-s-drought-is-over-its-water-problems-aren-t/0ab6cff2-c7d9-11ed-9cc5-a58a4f6d84cd_story.html).)

### 3. One County’s Experience

Impacted counties have been taking steps to address the issue of illegal cannabis farms. Last year, the Committee heard SB 1426 (Caballero). The bill’s sponsor, San Bernardino County, shared that it is tackling the issue of illegal cannabis cultivation on multiple fronts. Specifically, the County has created a multi-disciplinary task force to increase communication and collaboration between county agencies. The members of the task force include the Sheriff’s Office, District Attorney’s Office, Land Use Services/Code Enforcement, County Counsel’s Office, County Fire, Ag Weights and Measures, Public Health/Environmental Health Services, and the County Administrative Office. The DA’s Office employs a dual civil and criminal enforcement approach, and its environmental unit has increased collaboration with local and state law enforcement agencies, local, state, and federal regulatory agencies, and local and federal prosecutorial agencies. The County has also passed ordinances to expedite the removal of property from illegal cannabis farms if dedicated to the illegal cultivation of cannabis as well as increase criminal penalties and administrative fines for unlawful operations. (<https://hidesertstar.com/news/181560/officers-can-trash-pot-farm-leavings-under-new-rule/>; <https://bosd3.sbcounty.gov/wp-content/uploads/sites/50/2021/04/Cannabis-Urgency-Ordinance-Adopted.pdf>.) Finally, the Sheriff’s Department has increased enforcement efforts.

The following information was shared with the Committee regarding the activities of the Sheriff’s Department:

Last August, the San Bernardino County Sheriff’s Department started Operation Hammerstrike, a large-scale operation to eradicate illegal cannabis farming sites with five dedicated illegal marijuana eradication teams. Here’s the stats to-date of their raids.

**Total**

Search Warrants: 635  
 Arrests: 759  
 Greenhouses Eradicated: 4,503  
 Indoor Growing Locations: 106  
 Plants Seized: 820,917  
 Pounds of Processed Cannabis: 116,155.50  
 Grams of Concentrated Cannabis: 12,509  
 Guns Seized: 224

**Weekly Averages**

Search Warrants: 23  
 Arrests: 16  
 Greenhouses Eradicated: 161  
 Indoor Growing Locations: 4  
 Plants Seized: 29,318  
 Pounds of Processed Cannabis: 4,148.40  
 Grams of Concentrated Cannabis: 446.75  
 Guns Seized: 8

The number of illegal cannabis farms were initially estimated by the County at roughly 1,300. The Mojave Water Agency estimates the number of illegal cannabis sites in their service territory at 2,500. Some sites are only two acres, some are over 200 acres. Frequently these sites will use extensive amounts of clear plastic sheeting to create “hoop houses,” artificial green houses that can conserve water vapor loss from plants but also harms insects, birds, and other plants and wildlife. Gas or diesel generators will be run all night at times on these sites, creating greenhouse gas emissions and noise pollution.

...

Our efforts to mitigate environmental damages usually involve multiple local and state agencies. Dept. of Fish and Wildlife (CDFW) usually make determinations or handle the enforcement of major environmental violations. That sometimes includes HazMat/CUPA and the citations are forwarded to the County’s District Attorney for their consideration to prosecute as felonies. Typically, the Sheriff’s Department eradication teams make referrals to those agencies if they find environmental damage. CDFW also does their own enforcement and works up their own warrants independently of the Sheriff, so the County may not always be aware of properties that have major environmental issues.

County staff frequently encounter on-site dumping of sewage, trash, and other chemicals, and non-permitted grading and water wells. Each of these present significant issues for both enforcement and remediation.

**4. Effect of This Bill**

This bill was introduced in an attempt to address the proliferation of illicit cannabis farms throughout the state which are diverting water from public and private resources for their

operations and unlawfully using and dumping chemicals, among other things. Much of the conduct engaged in by illegal cannabis operations is currently subject to civil and criminal penalties under local ordinances, state law, and federal law. For example, all cannabis cultivation is unlawful under federal law. Some of the pollution-related conduct may constitute violations of federal environment law, including the Clean Water Act and Resource Conservation and Recovery Act, as well as violations of state environmental law. Existing state law additionally establishes a variety of civil penalties related to unlawful commercial cannabis activity. Further, local governments may pass ordinances to establish or increase fines related to illicit cannabis cultivation.

Proponents of the bill argue that more robust criminal penalties are necessary to address issues related to illegal cannabis farms. Specifically, this bill would add “surface or groundwater” to the existing statute criminalizing planting, cultivating, harvesting, drying, or processing more than six living cannabis plants when the offense resulted in intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources. This bill additionally creates three new felonies. Specifically, this bill makes it a felony to plant, cultivate, harvest, dry, or process more than fifty living cannabis plants if the offense involves one of the following: a violation of any provision of the Food and Agricultural Code relating to pesticides; taking or using of water from conveyance or storage facilities without the permission of the owner; and extraction or use of groundwater from an unpermitted well, or from a permitted well in excess of any restriction established, as specified.

## 5. Argument in Support

According to the Rural County Representatives of California, the bill’s sponsor:

This measure clarifies existing state law to explicitly penalize illegal cannabis growers who pollute groundwater and illegally “take” water....

Illegal cannabis farms are a serious, growing threat throughout California. Illicit cannabis cultivators frequently engage in human trafficking, water theft, and environmental pollution as part of their operations. Because some sites go undetected for years, the potential environmental damage could last for generations. The widespread use of dangerous and unregistered pesticides at illegal cannabis farms can be lethal to both humans and wildlife, posing immediate and long-term risks to those working in and near these sites and can pollute community drinking water sources. In addition, many of the communities plagued with illegal cannabis cultivation continually face drought emergencies, reinforcing the need to protect this finite resource.

California state law penalties are not strong enough to deter criminals from engaging in widespread illegal cannabis farming, nor does it recognize the danger illegal grows pose to water supply and groundwater pollution. ... Additional tools are needed to protect the public’s health and safety and further discourage illicit cannabis operations while strengthening the market for those who operate legally.

SB 753 amends Section 11358 of the Health and Safety Code to include groundwater as a public resource, and establish theft of groundwater, unauthorized tapping into a water conveyance or storage infrastructure, or digging

an unpermitted illegal well, may also be punished by imprisonment. Stronger penalties are an important step to deter illicit cannabis activities and the harmful effect it is having on our limited water resources.

**-- END --**