

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 2643 (Wood) – As Amended April 16, 2024

SUBJECT: Cannabis cultivation: environmental remediation

SUMMARY: Requires the Department of Fish and Wildlife (DFW) to study and report on cannabis site restoration projects as well as clarify the definition of “controlled substance.” Specifically, **this bill:**

- 1) Requires DFW to conduct a study to create a framework for cannabis site restoration projects funded by the Cannabis Restoration Grant Program (Program) with the goal of providing guidance for the cleanup, remediation, and restoration of environmental damage caused by cannabis cultivation by January 1, 2027 and make that study publically available.
- 2) Requires DFW, in collaboration with relevant federal agencies, to:
 - a) Develop recommendations for new technologies to address reconnaissance challenges in finding illicit cannabis cultivation on public lands; and
 - b) Address the availability, accessibility, and utility of tools both currently being used by federal, state, and local law enforcement and those yet to be employed.
- 3) Allows DFW to enter into an agreement with a nongovernmental organization or educational institution to conduct this study.
- 4) Requires DFW, in collaboration with relevant federal agencies, including the United States Forest Service, to facilitate biannual meetings of stakeholders to serve as forums to delineate the most effective strategies, frameworks, and workflows for identifying, reclaiming, and restoring lands affected by illicit cannabis cultivation and for eradicating illicit cannabis cultivation on those lands.
- 5) Requires DFW to submit a report to the Legislature annually starting January 1, 2026 until January 1, 2030, on illicit cannabis cultivation on public lands, including reconnaissance, eradication, reclamation, and restoration operations.
- 6) Requires the report to include an assessment of the number of trespassing cannabis cultivation sites or complexes within areas previously studied by DFW or other governmental entities in order to identify illicit cultivation trends on public lands.
- 7) Allows moneys from the Environmental Restoration Protection Account to be used for the report and study.
- 8) Expands the definition of “controlled substances” to include cannabis, should cannabis no longer be listed in one of the schedules set forth in the Health and Safety Code (HSC).
- 9) States findings and declarations that this bill furthers the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.

EXISTING LAW:

- 1) Defines “cannabis” as all parts of the cannabis plant, including seeds, resin, extract, and compounds (Business and Professions Code § 26001).
- 2) Lists controlled substances into five “schedules” intended to list drugs in decreasing order of harm and increasing medical utility or safety and provides penalties for the possession of and the engagement in commerce of a controlled substance. Includes in Schedule I the most serious and heavily controlled substances and within Schedule V the least serious and most lightly controlled substances (HSC § 11054–11058).
- 3) Lists cannabis as a Schedule I drug [HSC § 11054 (d)(13)].
- 4) Defines “controlled substance,” unless otherwise specified, as a drug, substance, or immediate precursor which is listed in any schedule in HSC § 11054–11058 (HSC § 11007).
- 5) Describes the additional civil penalties associated with the production or cultivation of a controlled substance on land under the management of Department of Parks and Recreation (State Parks), DFW, the Department of Forestry and Fire Protection, the State Lands Commission, a regional park district, the United States Forest Service, or the United States Bureau of Land Management, or within the respective ownership of a timberland production zone of more than 50,000 acres, or while trespassing on other public or private land in connection with the production or cultivation of a controlled substance (Fish and Game Code § 12025).
- 6) Assesses civil penalties on a person or entity that diverts or uses water for cannabis cultivation without approval from the state [Water Code Section 1847(b)(4)].
- 7) Creates Cannabis Tax Law [Revenue and Taxation Code (RTC) § 34010 *et seq.*].
- 8) Establishes the California Cannabis Tax Fund (Tax Fund) in the State Treasury wherein cannabis tax revenues are deposited (RTC § 34018).
- 9) Specifies that 20% of cannabis tax revenue funds remaining after other priorities are funded shall be deposited into the Environmental Restoration and Protection Account, disbursed to DFW and State Parks as follows:
 - a) To DFW and State Parks for the cleanup, remediation, and restoration of environmental damage in watersheds affected by cannabis cultivation and related activities, including, but not limited to, damage that occurred prior to enactment of the law, and to support local partnerships for this purpose. DFW and State Parks may distribute a portion of the funds they receive from the Environmental Restoration and Protection Account through grants;
 - b) To DFW and State Parks for the stewardship and operation of state-owned wildlife habitat areas and state park units in a manner that discourages and prevents the illegal cultivation, production, sale, and use of cannabis and cannabis products on public lands, and to facilitate the investigation, enforcement, and prosecution of illegal cultivation, production, sale, and use of cannabis or cannabis products on public lands; and

- c) To DFW to assist in funding the watershed enforcement program and multiagency taskforce to facilitate the investigation, enforcement, and prosecution of these offenses and to ensure the reduction of adverse impacts of cannabis cultivation, production, sale, and use on fish and wildlife habitats throughout the state [RTC § 34019 (2)].

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** This bill requires DFW to study and report on cannabis restoration activities. According to the author, “Illicit cannabis cultivation poses an immense threat to the California ecosystem and natural resources. In 2015, I authored AB 243, providing direction to [DFW] to restore watersheds impacted by illicit cannabis cultivation in key areas of coastal Northern California. [This bill] seeks to build on efforts to protect and restore lands across California by developing framework for restoration projects, increasing coordination between state and federal partners, and improving the efficiency of eradication, reclamation and restoration.”
- 2) **Background.** On November 8, 2016, California voters approved the "California Marijuana Legislation Initiative," also known as the Control, Regulate and Tax Adult Use of Marijuana Act by 57% of the vote (Proposition 64). Prior to the passage of Proposition 64, the possession or use of marijuana for recreational purposes in the State of California was illegal. Proposition 64 allowed adults aged 21 years or older to possess and use marijuana for recreational purposes. The initiative levied two additional new excise taxes: one for cultivation of marijuana and the other for retail sales of marijuana.

Funds from Proposition 64 are required to be with certain priority according to RTC § 34019. Remaining available funds are required to be put in a sub-trust with 20% allocated to DFW and State Parks for cleanup, remediation, and restoration of environmental damage from cannabis cultivation. Funding may be distributed for the stewardship and operation of state-owned wildlife habitat areas and state park units, including the watershed and multiagency task force, to prevent illegal cannabis related activities on public lands, and to facilitate the investigation, enforcement, and prosecution of illegal activities.

DFW cannabis enforcement. In its responsibility to manage and protect California’s natural resources, DFW and its scientists and wildlife officers are often on the frontlines for discovering and enforcing cannabis laws and regulations. DFW’s Law Enforcement Division works with growers to bring their facilities into compliance, provides assistance in remediating criminal environmental violations, and works with other agencies to remove illegal grows, growers, illegal water impoundments, and extremely toxic chemicals frequently associated with illegal grows. Between 2013 and early 2018, more than 700 inspections resulted in 399 tons of trash removed from public and private lands, including: 2.4 million feet of irrigation pipe, 50 tons of fertilizer, and 465 gallons of chemicals (many illegal in the United States). In addition, the removal of 709 dams and water diversions resulted in restoration of 800 million gallons of water back into local watersheds.¹ DFW released Cannabis Reports in 2018 and a status update in 2019. This bill would require similar reports to be released annually starting January 1, 2026.

¹ [DFW, Cannabis Cultivation Law Enforcement](#)

Cannabis Restoration Grant Program (CRGP). California's fish and wildlife are severely impacted by illicit cannabis cultivation practices including unlawful water diversions for irrigation, conversion of lands, poaching, and use of prohibited herbicides, rodenticides, and other environmental contaminants. DFW's CRGP funds projects to cleanup, remediate, and/or enhance watersheds and wildlife habitat impacted by cannabis. These projects may include cleanup and remediation of impacts due to illicit cannabis operations on qualified public land and private land, decommissioning roads, upgrading road crossings, upgrading culverts, and other projects that minimize erosion and sediment delivery, increase water conservation, and/or enhance biodiversity and wildlife habitat.² In early 2020, through the Environmental Restoration and Protection Account, approximately \$1.1 million of grant funds were used to help restore the upper Eel River, which has been impacted by cannabis cultivation. Currently, the CRGP has the opportunity to grant funds in support of partnerships to clean-up, remediate, and restore watersheds affected by cannabis cultivation, and related activities. This bill requires DFW to conduct a study to provide guidance for the cleanup, remediation, and restoration of environmental damage for cannabis site restoration projects and report on those activities on public land. The scope of this bill is narrower than the watershed-scale impacts permitted by Proposition 64; however, there does seem to be a specific need to provide guidance for site-specific clean up to move beyond site *reclamation* (eradication and removal of infrastructure and hazardous materials) to site *restoration*.

Cannabis Watershed Protection Program (CWPP). Also supported by the Tax Fund, State Parks has been able to dedicate staff to proactively identify illegal cannabis cultivation on State Parks properties, clean up trash and hazardous materials from the sites, and begin to restore resources damaged in watersheds affected by cannabis cultivation since 2019. The CWPP team is a multi-disciplinary collaboration including law enforcement, natural and cultural resource managers, road and trail maintenance crews, and other technical experts. According to State Parks, natural and cultural resource staff have been hired and dedicated to scoping and implementing restoration projects in watersheds affected by cannabis cultivation. The CWPP team has conducted an assessment of cannabis grows and risk factors on State Park units, resulting in a predictive geospatial model that will assist State Parks (and potentially other land manager partners) to refine the understanding of likely factors that put certain areas more at risk for illegal cannabis activity. State Parks will apply this understanding to focus support for operations and stewardship that discourage and prevent this damage.

Controlled substances. The federal Controlled Substances Act classifies a number of drugs and chemicals into one of five schedules. Drugs falling within Schedules II through V may be prescribed only by health practitioners in possession of a DEA registration and are ranked according to the drug's potential for abuse, with lower numbered schedules representing drugs with a higher risk of abuse or dependence. Schedule I drugs have been determined to have no currently accepted medical use and a high potential for abuse. Examples of Schedule I drugs are heroin, ecstasy, and cannabis. While the federal Controlled Substances Act and the state's Uniform Controlled Substances Act are typically aligned in regards to how medications are classified, there have occasionally been conflicts between federal and state schedules which has led to confusion. Reconciling these differences has been the subject of other legislation (see Related Legislation). This bill provides that if cannabis should be

² [Cannabis Restoration Grant Program](#)

removed from any schedule, that it would still be considered a controlled substance for the purpose of the penalties listed in the Fish and Game Code § 12025.

- 3) **Arguments in support.** A variety of groups write in support of this bill. Integral Ecology Research Center (IERC), a grant recipient from CRGP, writes about the detrimental effects of illicit cannabis grows such as habitat destruction, water diversions, and the use of harmful pesticides and fertilizers, but “despite efforts to detect and eradicate these cultivation sites, the process of habitat restoration has been slow.” IERC believes this bill “takes a vital step towards addressing logistical challenges and actively mitigating the environmental damage caused by illicit cannabis cultivation.” The group also writes in support of the meetings mandated by this bill which will serve as a forum of discussion between federal agencies, nonprofits, local governments, and tribes. Congressman Jared Huffman (CA-02) writes, “Coordination between the state and federal governments is critical” and pledges “to continue to work as a federal partner to support complementary investments in federal agencies for this purpose.”
- 4) **Related legislation.** AB 243 (Wood), Chapter 688, Statutes of 2015, requires, among other things, numerous state agencies to promulgate regulations or standards regarding medical marijuana and its cultivation and take actions to mitigate the environmental impact of marijuana cultivation.

AB 527 (Wood), Chapter 618, Statutes 2021, among other things, provides that if any cannabinoids are federally rescheduled or otherwise made legally prescribable, they shall also be legal to prescribe under state law, and would reconcile conflicts between state and federal controlled substance schedules.

SB 1429 (Monning) of 2020, among other things, would have changed references to “controlled substance” to “cannabis, cannabis product, or industrial hemp.” AB 1429 was referred to the Senate Natural Resources and Water Committee, but was never set for hearing.

SB 165 (Monning), Chapter 139, Statutes of 2015, imposes various additional civil penalties for violations in connection with the production or cultivation of a controlled substance.

REGISTERED SUPPORT / OPPOSITION:

Support

California Cannabis Industry Association
 California State Association of Counties
 Cannabis Policy Lab
 Congressman Jared Huffman
 Defenders of Wildlife
 Environmental Protection Information Center
 Integral Ecology Research Center (IERC)
 League of California Cities
 Rural County Representatives of California

Opposition

None on file

Analysis Prepared by: Stephanie Mitchell / W., P., & W. / (916) 319-2096