

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

SB 756 (Laird) – As Amended May 15, 2023

SENATE VOTE: 40-0

SUBJECT: Water: inspection: administrative procedure: notice: service

SUMMARY: Provides the State Water Resources Control Board (State Water Board) and the regional water resources control boards (Regional Water Boards) with new authority regarding unlicensed cannabis cultivation and expands the method of notice of State Water Board and Regional Water Board decisions. Specifically, **this bill:**

- 1) Authorizes the State Water Board to:
 - a) Inspect the property or facilities of any person or entity to determine compliance with the law and water policy that prevents waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in conducting an investigation or proceeding;
 - b) Obtain an inspection warrant in accordance with specified procedures if consent to inspect property or facilities is denied, except in the event of an emergency affecting public health and safety; and
 - c) Participate in an inspection of an unlicensed cannabis cultivation site conducted pursuant to a warrant when the party seeking that warrant requests the State Water Board's participation and when there is probable cause that the unlicensed cannabis cultivation and its associated activities are in violation of the Water Code.
- 2) Applies similar authorization to inspect unlicensed cannabis cultivation described in (1)(c) to the Regional Water Boards.
- 3) Expands the methods the State Water Board and Regional Water Boards may use to provide notice in accordance with the manner of service of a summons under specified provisions of the Code of Civil Procedure or by any method of physical delivery that provides a receipt, including electronic confirmation of delivery, in the following circumstances:
 - a) When the executive director of the State Water Board or an executive director of a Regional Water Board issues a complaint to any person or entity on which administrative civil liability may be imposed pursuant to a trespass or violation related to the enforcement of water rights and the diversion and use of water;
 - b) When the State Water Board serves a copy of decisions or orders related to water appropriation, public trust, sustainable ground water management, water reclamation, and the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water; and

- c) When certain violations are occurring or threatening to occur related to, among other things, unauthorized water diversions, permits, emergency regulations, water reuse, and cannabis cultivation, and the State Water Board is required to give notice and inform the party that they may request a hearing not later than 20 days after the notice is received.

EXISTING LAW:

- 1) Requires the Department of Water Resources (DWR) and the State Water Board to take all appropriate proceedings or actions to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water (Water Code § 275).
- 2) Requires each person who diverts water to file with the State Water Board a statement of their diversion and use, except as specified, and makes a willful misstatement of diversion or use of water punishable by a fine, imprisonment in the county jail, or both (Water Code §§ 5101, 5107).
- 3) Provides that a diversion or use of water other than as authorized by the Water Code is a trespass and a person who commits such trespass may be civilly liable, as specified (Water Code § 1052).
- 4) Declares that it is the intent of the Legislature that the state take vigorous action to enforce the terms and conditions of permits, licenses, certifications, and registrations to appropriate water, to enforce the State Water Board orders and decisions, and to prevent unlawful diversion of water. A person or entity may be civilly liable for a violation of a term or condition of a permit, license, certificate, or registration issued, or a regulation or order adopted by the board (Water Code §§ 1825, 1846).
- 5) Authorizes the State Water Board to issue a cease and desist order in response to specified violations or threatened violations of, among others, the prohibition against unauthorized diversion or use of water or emergency regulations adopted by the State Water Board to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion. The State Water Board is required to give notice by personal notice or certified mail, as specified (Water Code §§ 1831, 1834).
- 6) Authorizes the executive director of the State Water Board to issue a complaint to any person that diverts water in violation of a water right, fails to comply with a cease and desist order issued by the State Water Board, or makes a willful misstatement on a water diversion and use statement. Prescribes procedure for service of such a complaint and authorizes the State Water Board to issue an order to impose administrative civil liability after any necessary hearing (Water Code § 1055).
- 7) Requires the State Water Board serve a copy of a decision or order related to water rights to the relevant party by personal delivery or registered mail (Water Code § 1121).
- 8) Authorizes a Regional Water Board, when establishing or reviewing any water quality control plan or waste discharge requirements, to investigate the quality of any waters of the state within its region and to inspect the facilities of any person to ascertain whether water quality is being protected and waste discharge requirements are being complied with (Water Code § 13267).

- 9) Establishes that a cease and desist order of the State Water Board becomes effective and final upon its issuance. Requires copies of the order be served by personal service or by registered mail on the person charged with a violation and upon other affected persons who appeared at the hearing and requested a copy (Water Code § 13303).
- 10) Authorizes an executive officer of a Regional Water Board to issue a complaint to any person on whom administrative civil liability may be imposed and requires that the complaint be served by certified mail. Orders imposing administrative civil liability become effectively immediately upon issuance and copies of the orders are required to be served by certified mail upon the party served the complaint and provided to others person who appeared at the hearing and requested a copy (Water Code § 13323).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** This bill seeks to address three issues: (1) the State Water Boards' ability to participate in the inspection of unlicensed cannabis cultivation sites with law enforcement; (2) the State Water Boards' ability to inspect unlicensed cannabis cultivation sites for violation of water rights laws (illegal diversion and/or use); and (3) the State Water Boards' ability to serve various types of legal documents and provide notice to unlicensed cannabis cultivation sites. According to the author:

“Unlicensed cannabis cultivation poses a significant threat to California’s water supply and quality, which can harm our communities and sensitive wildlife. Thousands of pounds of sediment, banned rodenticides and pesticides, and chemicals are improperly discharged into our watersheds. Millions of gallons of water are illegally diverted or stolen daily. These water violations are felt all the way down to the taps in our homes where residents’ drinking water have been threatened.

“[This bill] equips the State and Regional Water Boards with the tools to investigate and enforce water quality and diversion violations associated with unlicensed cannabis cultivation, focusing on priority watersheds that are at high risk of environmental damage and unsafe drinking water supply. The bill authorizes Water Boards staff to obtain inspection warrants for suspected illegal water diversions, participate alongside law enforcement who have obtained appropriate criminal warrants, and serve enforcement documents through mail delivery methods that track receipt to prevent unlicensed cultivators from evading enforcement notices.”

- 2) **Background.** General state policy on water declares that the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use of the water in the interest of the people and for the public welfare.

The Water Boards. Under existing law, the State Water Board protects water quality and allocates surface water rights. To that end, the State Water Board is required to take all appropriate actions to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water and provides that the unauthorized diversion or use of water is a trespass. Existing law authorizes the State Water Board to (1) investigate all streams, stream systems, portions of stream systems, lakes, or other bodies of water; (2) take testimony regarding the rights to water or the use of water, and (3) ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the State.

Porter-Cologne establishes the responsibilities and authorities of the State Water Board and the nine Regional Water Boards, naming them "... the principal State agencies with primary responsibility for the coordination and control of water quality" (Water Code § 13001). Under this authority, the State Water Board establishes statewide water quality control policy and regulation, coordinates Regional Water Board efforts, and reviews Regional Water Board actions for consistency with statewide policy and regulation. The Regional Water Boards are semi-autonomous and make critical water quality decisions for their region. All duties and responsibilities of the Regional Water Boards center on providing reasonable protection and enhancement of the quality of both surface and ground waters in the region. Collectively, the Regional Water Boards and the State Water Board are often referred to as the Water Boards.

When water 'goes to pot.' There is no doubt that unlicensed cannabis cultivation poses a significant threat to California's water quality and supply. Illegal operations often use excessive amounts of water, use harmful pesticides and fertilizers that can contaminate the water supply, and disrupt local wildlife habitats.

In 2018, the Sacramento Bee reported an increase of illegal operations in Yosemite National Park and other public parks, where the use of banned pesticides are polluting water and poisoning endangered species.¹ Illegal operations have begun using carbofuran, an illegal pesticide in California, as a rodenticide to kill the animals that eat the plants at the grow sites. The use of such chemicals, according to the article, has led to further imperilment of species such as the California fisher and the spotted owl. Additionally, some of the poisons are now being detected in elk and other wildlife. In the past a majority of grow sites were found in Trinity, Mendocino, and Humboldt counties. Now, they can be found in at least 40 of California's 58 counties.

According to U.S. Forest Service officials, California now produces more cannabis than Mexico and is serving as an illegal growing lab for consumption from buyers mostly outside of California. The grow sites are contaminating and diverting millions of gallons of water, leaving trash heaps at hundreds of locations and endangering the public using the forests. Since 2021, the U.S. Forest Service has cleaned up more than 80 illegal cultivation sites in California National Forests.

In 2022, both CalMatters and the LA Times carried major stories describing widespread water theft by illegal marijuana grows. A federal Drug Enforcement Agency agent is quoted,

¹ [Yosemite, California forests in danger from poisonous pot grows, authorities say | The Sacramento Bee \(sacbee.com\)](https://www.sacbee.com)

saying “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.”² And the problem is statewide. California’s Campaign Against Marijuana Planting program conducted 449 operations, recovered 184 weapons, and removed nearly 67,000 pounds of cultivation infrastructure, including dams, water lines, and containers of toxic chemicals, such as carbofuran, methyl parathion, aluminum phosphate, zinc phosphide, and illegal fertilizers, over the course of the 2022 season.³

With a little help from friends. According to information provided by the author’s office, law enforcement entities often request Water Board staff to accompany them on criminal search warrants of suspected unlicensed cannabis cultivation sites to determine if a Water Code violation exists. However, judges sometimes deny the requests, citing the Water Boards’ authority to obtain administrative inspection warrants, and instead directing the Water Board to use its existing inspection warrant authority, which requires either consent or prior notice. Law enforcement can be reluctant to participate with the Water Boards pursuant to this authority because consent or prior notice can jeopardize officer and civilian safety and gives the suspected individual an opportunity to destroy or compromise evidence.

While the current administrative inspection process authorizes Regional Water Boards to investigate suspected water quality investigations, that authority does not extend to the investigation of suspected violations of water rights. This bill would allow the State Water Board to investigate illegal diversions or use of water.

Special delivery. This bill also expands the methods by which the Water Boards may serve legal documents and provide notice to include notice in accordance with the manner of service of a summons under specified provisions of the Code of Civil Procedures and by any method of physical delivery that provides a receipt. While the purpose of this expansion is to address a scenario where an operator of an unlicensed cannabis cultivation sites anticipates such documents being sent by certified mail and refuses to accept those documents, these new methods would also apply to a number of other instances when a complaint, cease and desist order, or notice of a cease and desist order is served.

- 3) **Dual-referral.** This bill has also been referred to Assembly Judiciary Committee.
- 4) **Arguments in support.** According to California Municipal Utilities Association, “[This bill] addresses threats to water quality and water availability associated with unlicensed cannabis cultivation by improving the State Water Board’s abilities to investigate and pursue enforcement actions against unlicensed cannabis activity by authorizing Water Boards staff to obtain inspection warrants for water rights and quality violations, and to participate in unlicensed cannabis site inspection alongside law enforcement with criminal warrants, when requested and upon warrant approval by a judge. CMUA members’ water supplies can be negatively impacted by unlicensed cannabis operations and we appreciate the author’s work

² [CalMatters, Thieves are stealing California’s scarce water. Where’s it going? Illegal marijuana farms](#) and [Los Angeles Times, As illegal marijuana farms invade desert communities, officials reconsider cannabis regulations](#)

³ [Office of the Attorney General, Attorney General Bonta Announces Eradication of Nearly One Million Cannabis Plants as Part of Interagency Effort to Combat Illegal Market](#)

to provide the Board with the tools they need to investigate and pursue enforcement of these grows or other facilities.”

A collection of environmental groups also write in support, lamenting the harm caused by unlicensed cannabis cultivators. “Unlicensed cultivators pipe water from threatened wetlands, often building unpermitted roads to transport and filter water through an elaborate system of unpermitted pipelines and reservoirs. Already low levels of flow are further reduced to critical waterways that habitats rely on. Thousands of pounds of sediment, fertilizer, and runoff from harmful and sometimes banned pesticides and chemicals are improperly discharged, also causing harm to already impaired waterways and degradation to wildlife that rely on the waterway.”

- 5) **Related legislation.** SB 389 (Allen) of the current legislative session authorizes the State Water Board to investigate the diversion and use of water from a stream to determine whether the diversion and use is based upon an appropriative right, riparian right, or other basis of right. SB 389 is awaiting referral in the Assembly.

SB 753 (Caballero) of the current legislative session provides that a person 18 years or older who plants, cultivates, harvests, dries, or processes more than six living cannabis plants may be subject to a felony if it results in substantial environmental harm to surface or groundwater, intentionally or with gross negligence, among other provisions. SB 753 is awaiting referral in the Assembly.

AB 460 (Bauer-Kahan) of the current legislative session, among other things, similarly authorizes the State Water Board to inspect the property or facilities of a person or entity to determine compliance with certain provisions of the Water Code and expands the way the State Water Board can serve a complaint. AB 460 is pending in the Senate Natural Resources and Water Committee.

AB 1337 (Wicks) of the current legislative session authorizes the State Water Board to adopt regulations to ensure water is used in the public’s interest and to implement regulations through orders curtailing water use under any claim of right. AB 1337 is pending in the Senate Natural Resources and Water Committee.

AB 195 (Committee on Budget and Fiscal Review) Chapter 56, Statutes of 2022, among other things, authorizes, for a violation resulting from unlicensed cannabis cultivation, a civil action brought by a county counsel or city attorney, upon approval of the State Water Board, instead of requiring the Attorney General to bring the civil action upon request of the State Water Board.

SB 1426 (Caballero) of 2021 would have made it a misdemeanor or felony to plant, cultivate, harvest, dry, or process more than 50 living cannabis plants if it involved unauthorized tapping into a water conveyance or storage infrastructure or digging or extracting groundwater from an unpermitted well. SB 1426 was held in the Senate Appropriations Committee.

AB 2525 (Wood) of 2018 would have required the Department of Fish and Wildlife to collaborate with the Department of Parks and Recreation to conduct an annual survey of all public lands and all surface water sources on public lands for unlawful cannabis cultivation

activity; to compile a database of unlawful cannabis cultivation activity occurring on public lands, and to ensure that the activity is eradicated by the Watershed Enforcement Team or other authority. AB 2525 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coastal Protection Network
California Coastkeeper Alliance
California Municipal Utilities Association
Defenders of Wildlife
Friends of the River
Humboldt Baykeeper
Monterey Waterkeeper
Resources Legacy Fund
Russian Riverkeeper
Sierra Club California
South Yuba River Citizens League
The Otter Project
Yuba River Waterkeeper

Opposition

None on file

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