



**RESOLUTION NO. 2022-43**  
**RESOLUTION NO. PFA-02**  
**ORDINANCE NO. 2022-02**

## **AGENDA**

### **OUR MISSION**

Protect, enhance, and develop Calaveras County's water resources and watersheds to provide safe, reliable, and cost-effective services to our communities.

Regular Board Meeting  
Wednesday, April 27, 2022  
1:00 p.m.

Calaveras County Water District  
120 Toma Court  
San Andreas, California 95249

**Board Chambers are open to the public and the following alternative is available to those who wish to participate in the meeting virtually:**

### **Microsoft Teams meeting**

**Join on your computer or mobile app**

[Click here to join the meeting](#)

**Or call in (audio only)**

[+1 323-647-8603,,605388082#](#)

Phone Conference ID: 605 388 082#

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Administration Office at 209-754-3028. Notification in advance of the meeting will enable CCWD to make reasonable arrangements to ensure accessibility to this meeting. Any documents that are made available to the Board before or at the meeting, not privileged or otherwise protected from disclosure, and related to agenda items, will be made available at CCWD for review by the public.

## **ORDER OF BUSINESS**

### **CALL TO ORDER / PLEDGE OF ALLEGIANCE**

1. **ROLL CALL**

2. **PUBLIC COMMENT**

**At this time, members of the public may address the Board on any non-agendized item. The public is encouraged to work through staff to place items on the agenda for Board consideration. No action can be taken on matters not listed on the agenda. Comments are limited to three minutes per person.**

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### **BOARD OF DIRECTORS**

Cindy Secada, President  
Bertha Underhill, Director

Scott Ratterman, Vice President  
Russ Thomas, Director

Jeff Davidson, Director

**3. CONSENT AGENDA**

**The following items are expected to be routine / non-controversial. Items will be acted upon by the Board at one time without discussion. Any Board member may request that any item be removed for later discussion.**

- 3a Approval of Minutes for the Board Meeting of March 23, 2022  
(Rebecca Hitchcock, Clerk to the Board)
- 3b Report on the Monthly Investment Transactions for March 2022  
(Jeffrey Meyer, Senior Vice President Hilltop Securities Inc)
- 3c Consideration of taking positions on Legislative Bills: AB 1717, SB 1235, SB 1426, AB 2728, and AB 2421  
(Jessica Self, External Affairs Manager)

**4. NEW BUSINESS**

- 4a\* Presentation of ACWA JPIA Refund Check by Patricia Slaven, JPIA Director of HR and Administration

**5. OLD BUSINESS**

- 5a Discussion/Action regarding the Slurry Line Water Services Wheeling Agreement with Utica Water and Power Authority  
(Brad Arnold, Water Resources Manager) **RES 2022- \_\_\_\_**

**6. REPORTS**

- 6a\* General Manager's Report  
(Michael Minkler)

**7.\* BOARD REPORTS / INFORMATION / FUTURE AGENDA ITEMS**

**8. NEXT BOARD MEETINGS**

- Wednesday, May 11, 2022, 1:00 p.m., Regular Board Meeting
- Wednesday, May 25, 2022, 1:00 p.m., Regular Board Meeting

**9. CLOSED SESSION**

- 9a Conference with Real Property Negotiators Gov. Code § 54956.8  
Property: APN 012-011-011, Copperopolis  
Agency negotiators: M. Minkler  
Negotiating parties: Calaveras Healthy Impact Prod Solutions (CHIPS)  
Under negotiation: Price and/or terms of payment
- 9b Conference with Legal Counsel-Anticipated Litigation  
Significant Exposure to Potential Litigation-Government Code Section 54956.9(d)(2)-2 cases.
- 9c Public Employee Performance Evaluation-Government Code §54957  
General Manager

10. **REPORTABLE ACTION FROM CLOSED SESSION**

11. **ADJOURNMENT**



# CALAVERAS COUNTY WATER DISTRICT

## Board of Directors

District 1      Scott Ratterman  
District 2      Cindy Secada  
District 3      Bertha Underhill  
District 4      Russ Thomas  
District 5      Jeff Davidson

## Financial Services

Umpqua Bank  
US Bank  
Wells Fargo Bank

## CCWD Committees

\*Engineering Committee  
\*Finance Committee  
\*Legal Affairs Committee

## Joint Power Authorities

ACWA / JPIA  
CCWD Public Financing Authority  
Calaveras-Amador Mokelumne River Authority (CAMRA)  
Calaveras Public Power Agency (CPPA)  
Eastern San Joaquin Groundwater Authority  
Tuolumne-Stanislaus Integrated Regional Water  
Management Joint Powers Authority (T-Stan JPA)  
Upper Mokelumne River Watershed Authority (UMRWA)

## Other Regional Organizations of Note

Calaveras County Parks and Recreation  
Committee  
Highway 4 Corridor Working Group  
Mountain Counties Water Resources  
Association (MCWRA)  
Mokelumne River Association (MRA)  
Tuolumne-Stanislaus Integrated Regional Water  
Mgt. JPA Watershed Advisory Committee (WAC)  
Eastern San Joaquin Groundwater Authority-Technical  
Advisory Committee

## Legal Counsel

Matthew Weber, Esq.  
Downey Brand, LLP

## Auditor

Richardson & Company, LLP

## Membership\*\*

Thomas / Davidson (alt. Secada)  
Underhill / Secada (alt. Thomas)  
Davidson / Ratterman (alt. Thomas)

Ratterman (alt. Michael Minkler)  
All Board Members  
Ratterman / Underhill (alt. Secada)  
Michael Minkler (Alt. Brad Arnold)  
Thomas  
Secada (alt. Thomas)  
Davidson (alt. Ratterman)

Thomas (alt. Ratterman)

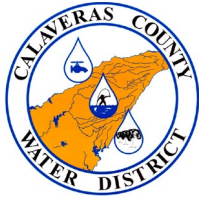
Thomas / Underhill  
All Board Members

All Board Members  
Brad Arnold

Brad Arnold

\* Standing committees, meetings of which require agendas & public notice 72 hours in advance of meeting.

\*\* The 1<sup>st</sup> name listed is the committee chairperson.



## MINUTES

### CALAVERAS COUNTY WATER DISTRICT REGULAR BOARD MEETING

**MARCH 23, 2022**

Directors Present: Cindy Secada, President  
Scott Ratterman, Vice-President  
Bertha Underhill, Director  
Russ Thomas, Director  
Jeff Davidson, Director

Staff Present: Michael Minkler, General Manager  
Matt Weber Esq, General Counsel  
Rebecca Hitchcock, Clerk to the Board  
Jesse Hampton, Plant Operations Manager  
Jessica Self, External Affairs Manager  
Charles Palmer, District Engineer  
John Griffith, Senior Civil Engineer  
Kevin Williams, Senior Civil Engineer  
John Griffin, Senior Civil Engineer  
Stacey Lollar, Human Resources Manager  
Brad Arnold, Water Resources Manager  
Tiffany Burke, Administrative Technician Senior  
Jared Gravette, Senior Supervisor Construction Inspector

Others Present: Simon Gray, Coleman Engineering  
Evi Laksana, GovInvest  
Max Stoff, GovInvest  
Julio Morales, Urban Futures Inc.

### **ORDER OF BUSINESS**

#### **CALL TO ORDER / PLEDGE OF ALLEGIANCE**

1. **ROLL CALL**

President Secada called the Regular Board Meeting to order at 1:00 p.m. and led the Pledge of Allegiance. All Board members were present.

2. **PUBLIC COMMENT**

There was no public comment.

**3. CONSENT AGENDA**

**MOTION: Directors Ratterman/Underhill-Approved Consent Agenda Items:  
3a, 3b, and 3c as presented**

- 3a Approval of Minutes for the Board Meeting of February 23, 2022  
(Rebecca Hitchcock, Clerk to the Board)
- 3b Report on the Monthly Investment Transactions for February 2022  
(Jeffrey Meyer, Senior Vice President Hilltop Securities Inc)
- 3c Re-Authorizing Remote Teleconference Meetings of the Board of Directors  
of The Calaveras County Water District for the Period of March 23 through April 14,  
2022, Pursuant to AB 361  
(Rebecca Hitchcock, Clerk to the Board) **RES 2022-32**

**AYES: Directors Ratterman, Underhill, Thomas, Davidson, and Secada**

**NOES: None**

**ABSTAIN: None**

**ABSENT: None**

**4. NEW BUSINESS**

- 4a Presentation on the GASB 75 Valuation  
(Stacey Lollar, Human Resources Manager)

**DISCUSSION:** Evi Laksana and Max Stoff from Govinvest gave a presentation on the GASB 75 Valuation and responded to questions from the Board.

This item was for information only; no action was taken.

- 4b Discussion/Action regarding Bond Funding for Proposed FY 2022-23 through FY  
2026-27 Capital Improvement Plan and Hiring of One New Construction Phase Staff  
(Michel Minkler, General Manager)
- Initiate a Private Placement Process for Bond Funding **RES 2022-33**

**MOTION: Directors Davidson/Ratterman-Adopted Resolution No. 2022-33  
Initiating a Private Placement Process for Bond Funding**

**DISCUSSION:** Mr. Minkler gave a summary of the CIP financing and personnel allocation requests. John Griffith, Senior Civil Engineer gave a presentation on the 5-Year CIP for Water and Sewer projects. He responded to questions and comments from the Board regarding the various projects and the status of each. He also explained that the District is pursuing grant funds where available. Julio Morales of UFI presented the financing plan to the Board. He reviewed the current market volatility and funding recommendations. He explained that they took the project list and subtracted out grant funding, connection fees, and reserves to come up with the bonding capacity. The recommendation is to apply for private placement bonds, which locks in the interest rates, to fund the CIP projects. Mr. Morales listed the preliminary projects that will be funded by the bond proceeds. There was significant discussion regarding the project list. Mr. Morales also reviewed the difference between a private placement and public sale bonds.

**PUBLIC COMMENT:** There was no public comment.

**AYES:** Directors Davidson, Ratterman, Underhill, Thomas, and Secada  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** None

- Amend the Fiscal Year 2021-22 Personnel Allocation **RES 2022-34**

**MOTION:** Directors Davidson/Ratterman– Adopted Resolution No. 2022-34  
Amending the Fiscal Year 2021-22 Personnel Allocation

**DISCUSSION:** Mr. Minkler addressed the Board regarding the staffing requirements due to the projected CIP capacity. He explained that the immediate need would be an additional Inspector to help with the construction management of the upcoming projects. There was discussion about the cost for in-house employees versus private sector consultants. Mr. Jared Gravette, Senior Supervisor Construction Inspector, addressed the Board to respond to their questions about requirements for Inspectors and the type of inspections the District needs.

**PUBLIC COMMENT:** There was no public comment.

**AYES:** Directors Davidson, Ratterman, Underhill, Thomas, and Secada  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** None

**RECESS** was called at 3:20 p.m. **SESSION RESUMED** at 3:28 p.m.

4c Discussion/Action regarding Award of Professional Services Agreement and Budget Adjustment for Design of the Jenny Lind Water System Tank A-B Transmission Pipeline Project, CIP #11088  
(Charles Palmer, District Engineer)

- Award of Professional Services Agreement for Design of the Jenny Lind Water System Tank A-B Transmission Pipeline Project, CIP #11088 **RES 2022-35**

**MOTION:** Directors Davidson/Thomas– Adopted Resolution No. 2022-35 Awarding of Professional Services Agreement for Design of the Jenny Lind Water System Tank A-B Transmission Pipeline Project, CIP #11088

**DISCUSSION:** Mr. Palmer presented a summary of the project and described the bids received. He stated staff recommends awarding the contract to Coleman Engineering and responded to questions from the Board regarding the reasons behind that recommendation. Simon Gray, from Coleman Engineering discussed the project design with the Board.

**PUBLIC COMMENT:** There was no public comment.

**AYES:** Directors Davidson, Thomas, Ratterman, Underhill, and Secada  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** None

- Budget Adjustment for Design of the Jenny Lind Water System Tank A-B Transmission Pipeline Project, CIP #11088 **RES 2022-36**

**MOTION:** Directors Davidson/Thomas- Adopted Resolution No. 2022-36 Amending the FY 2021-22 Operating and CIP budget adding \$390,000 in funding for the Jenny Lind Water System Tank A-B Transmission Pipeline Project, CIP #11088

**DISCUSSION:** There was no additional discussion.

**PUBLIC COMMENT:** There was no public comment.

**AYES:** Directors Davidson, Ratterman, Underhill, Thomas, and Secada  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** None

**5. REPORTS**

5a General Manager's Report  
(Michael Minkler)

**DISCUSSION:** Mr. Minkler reported on the following activities: 1) a sewer spill at Lake Tulloch; 2) Randy Bowersox from NCPA has been promoted and his replacement has not been announced; 3) Summer Nicotero is the new General Manager at UPUD; 4) the District needs to prepare for state drought curtailments; 5) there have been cost sharing discussions with District partners; 6) two successful Director tours; 7) the arrearage funding is going out to qualified customers; and 8) the billing process is still a challenge but progress is being made with each cycle.

**6. BOARD REPORTS / INFORMATION / FUTURE AGENDA ITEMS**

Director Underhill stated the new External Affairs Manager is doing a great job representing CCWD.

Director Ratterman reported Mountain Counties meeting will be April 1, 2022. He also stated he would be absent for the April 13, 2022 Board Meeting.

Director Thomas asked about the cheat sheets for the Directors on rates and the Jenny Lind School Project. He also stated the District should not put a CCWD sign on the new Maintenance Building.

Director Davidson would like to see more press releases about District obstacles. He also stated he would be absent for the April 27, 2022 Board Meeting.

Director Secada reported on the IRWM meeting at TUD. She also asked about the Brown Act for remote meetings and would like a FERC and Slurry Line update.

**7. NEXT BOARD MEETINGS**

- Wednesday, April 13, 2022, 1:00 p.m., Regular Board Meeting
- Wednesday, April 27, 2022, 1:00 p.m., Regular Board Meeting

**8. CLOSED SESSION**



The meeting adjourned into Closed Session at approximately 4:02 p.m. Those present were Board Members: Cindy Secada, Russ Thomas, Bertha Underhill, Jeff Davidson, and Scott Ratterman; staff members Michael Minkler, General Manager; and General Counsel, Matt Weber.

- 8a Conference with Legal Counsel-Anticipated Litigation  
Significant Exposure to Potential Litigation-Government Code Section  
54956.9(d)(2)-2 cases.

**9. REPORTABLE ACTION FROM CLOSED SESSION**

The Board reconvened into Open Session at approximately 4:33 p.m. There was no reportable action.

**11. ADJOURNMENT**

With no further business, the meeting adjourned at 4:33 p.m.

Respectfully Submitted:

ATTEST:

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Michael Minkler  
General Manager

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Rebecca Hitchcock  
Clerk to the Board

# Agenda Item

DATE: April 27, 2022  
TO: Michael Minkler, General Manager  
FROM: Jeffrey Meyer, Senior Vice President, Hilltop Securities, Inc.  
SUBJECT: Report on the Monthly Investment Transactions for March 31, 2022

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## RECOMMENDED ACTION:

For information only.

## SUMMARY:

Per the District's Investment Policy, Staff will report the monthly investment activity for the preceding month. During March 2022 the following investment transactions occurred:

<b>Chandler Asset Management Activity:</b>	
<b>Book Value at 02/28/2022</b>	<b>20,010,630.11</b>
Security Purchases	79,913.60
Money Market Fund Purchases	20,304.74
Money Market Contributions	-
Money Market Fund Sales	(79,913.60)
Money Market Fund Withdrawals	(1,794.33)
Amortization/Accretion	(5,289.63)
<b>Book Value at 03/31/2022</b>	<b>20,023,850.89</b>
<b>Local Agency Investment Fund Activity:</b>	
<b>None</b>	<b>11,907,995.00</b>
<b>Balance at 03/31/2022</b>	<b>11,907,995.00</b>

LAIF (Local Agency Investment Fund) daily interest rates are 0.42% as of 03/31/2022. The LAIF rate has remained relatively low, and the majority of available funds are being invested through Chandler Asset Management.

*Attachment: Investment Activity Report for March 2022*

**CALAVERAS COUNTY WATER DISTRICT**  
**INVESTMENT ACTIVITY**  
**FOR THE MONTH ENDING March 31, 2022**

INVESTMENT TRUSTEE/TYPE	MARKET VALUE	INVESTMENT COST				CM INTEREST AND DIVIDEND RECVD
		COST	PAR (PRINC)	CPN RATE	DATE INVST	
Local Agency Investment Fund	11,907,995.00	11,907,995.00	11,907,995.00	0.290%	ongoing	-
Chandler Asset Management	19,168,752.80	20,023,850.89	19,906,844.58	0.530%	ongoing	20,304.74
<b>Totals</b>	<b>31,076,747.80</b>	<b>31,931,845.89</b>	<b>31,814,839.58</b>			<b>20,304.74</b>

<b>Chandler Asset Management Activity:</b>	
<b>Book Value at 02/28/2022</b>	<b>20,010,630.11</b>
Security Purchases	79,913.60
Money Market Fund Purchases	20,304.74
Money Market Contributions	-
Money Market Fund Sales	(79,913.60)
Money Market Fund Withdrawals	(1,794.33)
Amortization/Accretion	(5,289.63)
<b>Book Value at 03/31/2022</b>	<b>20,023,850.89</b>
<b>Local Agency Investment Fund Activity:</b>	
<b>None</b>	<b>11,907,995.00</b>
<b>Balance at 03/31/2022</b>	<b>11,907,995.00</b>

**CALAVERAS COUNTY WATER DISTRICT  
CHANDLER ASSET MANAGEMENT  
FOR THE MONTH ENDED March 31, 2022**

INVESTMENT TRUSTEE/TYPE	MARKET VALUE	INVESTMENT COST			Dividends Earned	Interest Earned	Net Income
		BOOK	PAR Value/Units	CPN RATE			
Asset Backed Security	929,493.65	959,931.73	960,000.00	0.55%		434.09	434.09
Agency Securities	2,309,119.60	2,411,665.86	2,400,000.00	0.36%		750.00	750.00
CMO	199,959.00	210,037.36	200,000.00	0.62%		445.00	445.00
Corporate Securities	3,696,622.64	3,854,098.02	3,790,000.00	0.85%		14,637.50	14,637.50
Money Market Fund (Cash)	86,844.58	86,844.58	86,844.58	0.01%	0.65		0.65
Negotiable CD	2,143,983.55	2,149,999.94	2,150,000.00	0.19%			-
Supernational Securities	1,058,261.38	1,121,372.55	1,120,000.00	0.65%		787.50	787.50
US Treasury	8,744,468.40	9,229,900.85	9,200,000.00	0.54%		3,250.00	3,250.00
<b>Totals</b>	<b>19,168,752.80</b>	<b>20,023,850.89</b>	<b>19,906,844.58</b>	<b>0.53%</b>	<b>0.65</b>	<b>20,304.09</b>	<b>20,304.74</b>

# Agenda Item

DATE: April 27, 2022

TO: Michael Minkler, General Manager

FROM: Jessica Self, External Affairs Manager

SUBJECT: Consideration of taking positions on Legislative Bills: AB 1717, SB 1235, SB 1426, AB 2728, and AB 2421

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**RECOMMENDED ACTION:** The Legal Affairs Committee met on April 5, 2022, and recommends the Board takes the following positions on the listed legislative bills:

Motion: \_\_\_\_\_/\_\_\_\_\_ by minute entry to take an

- “OPPOSE” position on AB 1717 (Aguilar-Curry): Public Works: Definition
- “SUPPORT” position on SB 1235 (Borgeas): Portable Equipment: Emergency Events
- “SUPPORT” position on SB 1426 (Caballero): Cannabis: Water Pollution Crimes
- “SUPPORT” position on AB 2728 (Smith): Unlawful Cannabis Activity
- “SUPPORT” position on AB 2421 (Rubio): Unpermitted Cannabis Cultivation.

## **SUMMARY:**

### Public Works: Definition | AB 1717 (Aguilar-Curry)

On March 16, Assembly Bill 1717, passed its first committee after being introduced in February. The bill would change the definition of public works to include fuels treatment projects, and thus require payment of prevailing wage.

The District is prioritizing projects and is actively engaged in partnership coordination to continue the development of robust forest resilience and watershed health planning and project implementation. Unfortunately, AB 1717 would raise the costs of imperative forest health and wildfire mitigation projects needed to protect the District’s infrastructure, improve watershed health, and protect the surrounding communities. In addition, multiple planned wildfire mitigation projects are located in disadvantaged communities that have the potential to be faced with catastrophic wildfires. These same communities depend on maximizing public funding to prioritize wildfire mitigation.

Due to the potential serious adverse impacts on the District's ability to fund wildfire mitigation projects, the Legal Affairs Committee recommends the Board adopt an OPPOSE position on AB 1717.

#### Portable Equipment: Emergency Events | SB 1235 (Borgeas)

This bill would allow portable power equipment to be operated during an emergency event. For the purposes of this bill, "emergency event" would include both of the following: (1) an emergency event, as defined in the California Air Resources Board's (CARB) regulations (unplanned, sudden event); or (2) a Public Safety Power Shut-Off (PSPS) event. Despite some guidance from CARB that PSPS events are emergencies within the scope of its regulations and therefore use of back-up power sources is permitted, there is a concern that CARB may rescind the guidance if PSPS events become more common. The author reportedly intends to permanently codify CARB's guidance for portable engines by stating that PSPS events constitute an emergency under the CARB regulations.

Due to the imperative need for portable generators to keep District infrastructure functioning during PSPS events, the Legal Affairs Committee recommends the Board adopt a SUPPORT position on SB 1235.

#### Cannabis: Water Pollution Crimes | SB 1426 (Caballero)

This bill would make it a felony to plant, cultivate, harvest, dry or process more than six living cannabis plants if the activity involves theft of groundwater or water pollution. This bill would also state that an existing law making it illegal to cause substantial environmental harm to public resources includes harming groundwater.

The Legal Affairs Committee recommends the Board adopt a SUPPORT position on AB 1426.

#### Unlawful Cannabis Activity | AB 2728 (Smith)

This bill would increase the civil penalty to 4 times the amount of the license fee. In addition, a person aiding and abetting unlicensed commercial cannabis activity will be subject to civil penalties of up to three times the amount of the license fee for each violation, but in no case shall the penalty exceed thirty thousand dollars (\$30,000) for each violation. Each day of operation of unlicensed commercial cannabis activity that a person is found to have aided and abetted, will constitute as a separate violation.

The Legal Affairs Committee recommends the Board adopt a SUPPORT position on AB 2728.

#### Unpermitted Cannabis Cultivation | AB 2421 (Rubio)

This bill will enhance the authority of county counsels, and city attorney's to civilly prosecute and enjoin water theft and pollution.

Specifically, this bill would:

- Extend the prohibition of use of the affirmative defense to a civil action alleging unpermitted cannabis cultivation.
- Expand the ability of county counsel to pursue civil actions for unpermitted cannabis cultivation by deleting a requirement that civil actions be brought only by the Attorney General.
- Authorize a county to recover expenses from investigating and prosecuting a civil action for unpermitted cannabis cultivation out of its fish and wildlife propagation fund.
- Authorize a county counsel or city attorney to bring an action for violation of the diversion or use of water for unpermitted cannabis cultivation by removing a requirement that those actions be brought only by the Attorney General, and any funds collected as a result of such an action could be used to reimburse the county or the Attorney General's office for investigating and prosecuting the action.

The bill's sponsor notes that the Attorney General's Office lacks adequate resources to take on the level of case's related to unpermitted cannabis cultivation, so expanding that authority to local governments would help alleviate some of the burden and increase protection to water resources from unpermitted cannabis cultivation.

The Legal Affairs Committee recommends the Board adopt a SUPPORT position on AB 2421.

#### **FINANCIAL CONSIDERATIONS:**

*Attachments: Bill Text for AB 1717, SB 1235, SB 1426, AB 2728, and AB 2421*

**ASSEMBLY BILL**

**No. 1717**

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**Introduced by Assembly Member Aguiar-Curry**

January 27, 2022

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An act to amend Section 1720 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 1717, as introduced, Aguiar-Curry. Public works: definition.

Existing law requires that, except as specified, not less than the general prevailing rate of per diem wages, determined by the Director of Industrial Relations, be paid to workers employed on public works projects. Existing law defines the term “public works” for purposes of requirements regarding the payment of prevailing wages to include construction, alteration, demolition, installation, or repair work done under contract and paid for using public funds, except as specified. Existing law makes a willful violation of laws relating to the payment of prevailing wages on public works a misdemeanor.

This bill would expand the definition of “public works” to include fuel reduction work paid for in whole or in part out of public funds performed as part of a fire mitigation project, as specified. By expanding the scope of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1720 of the Labor Code is amended to  
 2 read:  
 3 1720. (a) As used in this chapter, “public works” means all of  
 4 the following:  
 5 (1) Construction, alteration, demolition, installation, or repair  
 6 work done under contract and paid for in whole or in part out of  
 7 public funds, except work done directly by a public utility company  
 8 pursuant to order of the Public Utilities Commission or other public  
 9 authority. For purposes of this paragraph, “construction” includes  
 10 work performed during the design, site assessment, feasibility  
 11 study, and other preconstruction phases of construction, including,  
 12 but not limited to, inspection and land surveying work, regardless  
 13 of whether any further construction work is conducted, and work  
 14 performed during the postconstruction phases of construction,  
 15 including, but not limited to, all cleanup work at the jobsite. For  
 16 purposes of this paragraph, “installation” includes, but is not  
 17 limited to, the assembly and disassembly of freestanding and  
 18 affixed modular office systems.  
 19 (2) Work done for irrigation, utility, reclamation, and  
 20 improvement districts, and other districts of this type. “Public  
 21 works” does not include the operation of the irrigation or drainage  
 22 system of an irrigation or reclamation district, except as used in  
 23 Section 1778 relating to retaining wages.  
 24 (3) Street, sewer, or other improvement work done under the  
 25 direction and supervision or by the authority of an officer or public  
 26 body of the state, or of a political subdivision or district thereof,  
 27 whether the political subdivision or district operates under a  
 28 freeholder’s charter or not.  
 29 (4) The laying of carpet done under a building lease-maintenance  
 30 contract and paid for out of public funds.  
 31 (5) The laying of carpet in a public building done under contract  
 32 and paid for in whole or in part out of public funds.  
 33 (6) Public transportation demonstration projects authorized  
 34 pursuant to Section 143 of the Streets and Highways Code.

1 (7) (A) Infrastructure project grants from the California  
2 Advanced Services Fund pursuant to Section 281 of the Public  
3 Utilities Code.

4 (B) For purposes of this paragraph, the Public Utilities  
5 Commission is not the awarding body or the body awarding the  
6 contract, as defined in Section 1722.

7 (8) Tree removal work done in the execution of a project under  
8 paragraph (1).

9 (9) *Fuel reduction work paid for in whole or in part out of public*  
10 *funds performed as part of a fire mitigation project, including, but*  
11 *not limited to, residential chipping, rural road fuel breaks, fire*  
12 *breaks, and vegetation management.*

13 (b) For purposes of this section, “paid for in whole or in part  
14 out of public funds” means all of the following:

15 (1) The payment of money or the equivalent of money by the  
16 state or political subdivision directly to or on behalf of the public  
17 works contractor, subcontractor, or developer.

18 (2) Performance of construction work by the state or political  
19 subdivision in execution of the project.

20 (3) Transfer by the state or political subdivision of an asset of  
21 value for less than fair market price.

22 (4) Fees, costs, rents, insurance or bond premiums, loans, interest  
23 rates, or other obligations that would normally be required in the  
24 execution of the contract, that are paid, reduced, charged at less  
25 than fair market value, waived, or forgiven by the state or political  
26 subdivision.

27 (5) Money loaned by the state or political subdivision that is to  
28 be repaid on a contingent basis.

29 (6) Credits that are applied by the state or political subdivision  
30 against repayment obligations to the state or political subdivision.

31 (c) Notwithstanding subdivision (b), all of the following apply:

32 (1) Private residential projects built on private property are not  
33 subject to this chapter unless the projects are built pursuant to an  
34 agreement with a state agency, a redevelopment agency, a successor  
35 agency to a redevelopment agency when acting in that capacity,  
36 or a local public housing authority.

37 (2) If the state or a political subdivision requires a private  
38 developer to perform construction, alteration, demolition,  
39 installation, or repair work on a public work of improvement as a  
40 condition of regulatory approval of an otherwise private

1 development project, and the state or political subdivision  
2 contributes no more money, or the equivalent of money, to the  
3 overall project than is required to perform this public improvement  
4 work, and the state or political subdivision maintains no proprietary  
5 interest in the overall project, then only the public improvement  
6 work shall thereby become subject to this chapter.

7 (3) (A) If the state or a political subdivision reimburses a private  
8 developer for costs that would normally be borne by the public,  
9 or provides directly or indirectly a public subsidy to a private  
10 development project that is de minimis in the context of the project,  
11 an otherwise private development project shall not thereby become  
12 subject to this chapter.

13 (B) (i) For purposes of subparagraph (A), a public subsidy is  
14 de minimis if it is both less than six hundred thousand dollars  
15 (\$600,000) and less than 2 percent of the total project cost.

16 (ii) Notwithstanding clause (i), for purposes of subparagraph  
17 (A), a public subsidy for a project that consists entirely of  
18 single-family dwellings is de minimis if it is less than 2 percent  
19 of the total project cost.

20 (iii) This subparagraph shall not apply to a project that was  
21 advertised for bid, or a contract that was awarded, before July 1,  
22 2021.

23 (4) The construction or rehabilitation of affordable housing units  
24 for low- or moderate-income persons pursuant to paragraph (5) or  
25 (7) of subdivision (e) of Section 33334.2 of the Health and Safety  
26 Code that are paid for solely with moneys from the Low and  
27 Moderate Income Housing Fund established pursuant to Section  
28 33334.3 of the Health and Safety Code or that are paid for by a  
29 combination of private funds and funds available pursuant to  
30 Section 33334.2 or 33334.3 of the Health and Safety Code do not  
31 constitute a project that is paid for in whole or in part out of public  
32 funds.

33 (5) Unless otherwise required by a public funding program, the  
34 construction or rehabilitation of privately owned residential projects  
35 is not subject to this chapter if one or more of the following  
36 conditions are met:

37 (A) The project is a self-help housing project in which no fewer  
38 than 500 hours of construction work associated with the homes  
39 are to be performed by the home buyers.

1 (B) The project consists of rehabilitation or expansion work  
2 associated with a facility operated on a not-for-profit basis as  
3 temporary or transitional housing for homeless persons with a total  
4 project cost of less than twenty-five thousand dollars (\$25,000).

5 (C) Assistance is provided to a household as either mortgage  
6 assistance, downpayment assistance, or for the rehabilitation of a  
7 single-family home.

8 (D) The project consists of new construction, expansion, or  
9 rehabilitation work associated with a facility developed by a  
10 nonprofit organization to be operated on a not-for-profit basis to  
11 provide emergency or transitional shelter and ancillary services  
12 and assistance to homeless adults and children. The nonprofit  
13 organization operating the project shall provide, at no profit, not  
14 less than 50 percent of the total project cost from nonpublic  
15 sources, excluding real property that is transferred or leased. Total  
16 project cost includes the value of donated labor, materials, and  
17 architectural and engineering services.

18 (E) The public participation in the project that would otherwise  
19 meet the criteria of subdivision (b) is public funding in the form  
20 of below-market interest rate loans for a project in which  
21 occupancy of at least 40 percent of the units is restricted for at  
22 least 20 years, by deed or regulatory agreement, to individuals or  
23 families earning no more than 80 percent of the area median  
24 income.

25 (d) Notwithstanding any provision of this section to the contrary,  
26 the following projects are not, solely by reason of this section,  
27 subject to this chapter:

28 (1) Qualified residential rental projects, as defined by Section  
29 142(d) of the Internal Revenue Code, financed in whole or in part  
30 through the issuance of bonds that receive allocation of a portion  
31 of the state ceiling pursuant to Chapter 11.8 (commencing with  
32 Section 8869.80) of Division 1 of Title 2 of the Government Code  
33 on or before December 31, 2003.

34 (2) Single-family residential projects financed in whole or in  
35 part through the issuance of qualified mortgage revenue bonds or  
36 qualified veterans' mortgage bonds, as defined by Section 143 of  
37 the Internal Revenue Code, or with mortgage credit certificates  
38 under a Qualified Mortgage Credit Certificate Program, as defined  
39 by Section 25 of the Internal Revenue Code, that receive allocation  
40 of a portion of the state ceiling pursuant to Chapter 11.8

1 (commencing with Section 8869.80) of Division 1 of Title 2 of  
2 the Government Code on or before December 31, 2003.

3 (3) Low-income housing projects that are allocated federal or  
4 state low-income housing tax credits pursuant to Section 42 of the  
5 Internal Revenue Code, Chapter 3.6 (commencing with Section  
6 50199.4) of Part 1 of Division 31 of the Health and Safety Code,  
7 or Section 12206, 17058, or 23610.5 of the Revenue and Taxation  
8 Code, on or before December 31, 2003.

9 (e) Notwithstanding paragraph (1) of subdivision (a),  
10 construction, alteration, demolition, installation, or repair work on  
11 the electric transmission system located in California constitutes  
12 a public works project for the purposes of this chapter.

13 (f) If a statute, other than this section, or a regulation, other than  
14 a regulation adopted pursuant to this section, or an ordinance or a  
15 contract applies this chapter to a project, the exclusions set forth  
16 in subdivision (d) do not apply to that project.

17 (g) For purposes of this section, references to the Internal  
18 Revenue Code mean the Internal Revenue Code of 1986, as  
19 amended, and include the corresponding predecessor sections of  
20 the Internal Revenue Code of 1954, as amended.

21 (h) The amendments made to this section by either Chapter 938  
22 of the Statutes of 2001 or the act adding this subdivision shall not  
23 be construed to preempt local ordinances requiring the payment  
24 of prevailing wages on housing projects.

25 SEC. 2. No reimbursement is required by this act pursuant to  
26 Section 6 of Article XIII B of the California Constitution because  
27 the only costs that may be incurred by a local agency or school  
28 district will be incurred because this act creates a new crime or  
29 infraction, eliminates a crime or infraction, or changes the penalty  
30 for a crime or infraction, within the meaning of Section 17556 of  
31 the Government Code, or changes the definition of a crime within  
32 the meaning of Section 6 of Article XIII B of the California  
33 Constitution.

**Introduced by Senator Borgeas**February 17, 2022

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An act to add Section 41756 to the Health and Safety Code, relating to air pollution.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1235, as introduced, Borgeas. Air pollution: portable equipment: emergency events.

Existing law authorizes local air pollution control and air quality management districts (air districts) to establish a permit system requiring that any person who builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance that may cause the issuance of air contaminants obtain a permit to ensure compliance with applicable air quality standards. Existing law requires the State Air Resources Board to establish, by regulation, an optional registration program for portable equipment that is, or may be, used in more than a single air district. Pursuant to this directive, the state board established the Portable Equipment Registration Program, which allows portable engines and equipment units to operate throughout the state without authorization or permits from air districts. The state board's regulations allow for the temporary operation of otherwise unregistered or unpermitted portable engines during an emergency event if certain conditions are met. The state board's regulations define "emergency event" as any situation arising from a sudden and reasonably unforeseen natural disaster such as earthquake, flood, fire, or other unforeseen events beyond the control of the portable engine or equipment unit operator, its officers, employees, and contractors that threatens public health and safety and that requires the immediate temporary operation

of portable engines or equipment units to help alleviate the threat to public health and safety.

This bill would codify the state board’s regulation authorizing portable equipment to be operated during an emergency event, as defined above, and would also authorize portable equipment to be operated during a public safety power shut-off event. The bill would define “public safety power shut-off event,” in part, as a planned power outage undertaken by an electrical corporation to reduce the risk of wildfires caused by utility equipment.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 41756 is added to the Health and Safety
- 2 Code, to read:
- 3 41756. (a) Notwithstanding any other law, portable equipment
- 4 may be operated during an emergency event if the portable
- 5 equipment, and the owner or operator of the portable equipment,
- 6 complies with the requirements of subdivision (c) of Section 2455
- 7 of Title 13 of the California Code of Regulations.
- 8 (b) For purposes of this section, “emergency event” includes
- 9 both of the following:
- 10 (1) An “emergency event,” as defined in subdivision (j) of
- 11 Section 2452 of Title 13 of the California Code of Regulations.
- 12 (2) A public safety power shut-off event. For the purpose of
- 13 this subdivision, “public safety power shut-off event” has the same
- 14 meaning as “deenergization event” set forth in Section 351 of the
- 15 Water Code.

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AMENDED IN SENATE APRIL 7, 2022

**SENATE BILL**

**No. 1426**

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**Introduced by Senator Caballero**

February 18, 2022

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An act to amend Section 11358 of the Health and Safety Code, relating to cannabis.

LEGISLATIVE COUNSEL'S DIGEST

SB 1426, as amended, Caballero. Cannabis: water pollution crimes.

Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), approved by the voters as Proposition 64 at the November 8, 2016, statewide general election, regulates the cultivation, distribution, transport, storage, manufacturing, testing, processing, sale, and use of marijuana for nonmedical purposes by people 21 years of age and older. AUMA authorizes the Legislature to amend its provisions with a  $\frac{2}{3}$  vote of both houses to further its purposes and intent. Under AUMA, a person 18 years of age or older who plants, cultivates, harvests, dries, or processes more than 6 living cannabis plants, or any part thereof, may be charged with a felony if specified conditions exist, including when the offense causes substantial environmental harm to public lands or other public resources.

This bill would make it a *misdemeanor or felony* to plant, cultivate, harvest, dry, or process more than ~~6~~ 50 living cannabis plants, or any part thereof, and where that activity involves theft of groundwater, unauthorized tapping into a water conveyance or storage infrastructure, digging an unpermitted, illegal well, or the pollution of groundwater, as specified. This bill would also clarify that causing substantial environmental harm to public resources includes groundwater. By



expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11358 of the Health and Safety Code is  
2 amended to read:  
3 11358. Each person who plants, cultivates, harvests, dries, or  
4 processes cannabis plants, or any part thereof, except as otherwise  
5 provided by law, shall be punished as follows:  
6 (a) Each person under the age of 18 who plants, cultivates,  
7 harvests, dries, or processes any cannabis plants shall be punished  
8 in the same manner provided in paragraph (1) of subdivision (b)  
9 of Section 11357.  
10 (b) Each person at least 18 years of age but less than 21 years  
11 of age who plants, cultivates, harvests, dries, or processes not more  
12 than six living cannabis plants shall be guilty of an infraction and  
13 a fine of not more than one hundred dollars (\$100).  
14 (c) Each person 18 years of age or over who plants, cultivates,  
15 harvests, dries, or processes more than six living cannabis plants  
16 shall be punished by imprisonment in a county jail for a period of  
17 not more than six months or by a fine of not more than five hundred  
18 dollars (\$500), or by both that fine and imprisonment.  
19 (d) Notwithstanding subdivision (c), a person 18 years of age  
20 or over who plants, cultivates, harvests, dries, or processes more  
21 than six living cannabis plants, or any part thereof, except as  
22 otherwise provided by law, may be punished by imprisonment  
23 pursuant to subdivision (h) of Section 1170 of the Penal Code if  
24 any of the following conditions exist:  
25 (1) The person has one or more prior convictions for an offense  
26 specified in clause (iv) of subparagraph (C) of paragraph (2) of  
27 subdivision (e) of Section 667 of the Penal Code or for an offense

1 requiring registration pursuant to subdivision (c) of Section 290  
2 of the Penal Code.

3 (2) The person has two or more prior convictions under  
4 subdivision (c).

5 (3) The offense resulted in any of the following:

6 (A) Violation of Section 1052 of the Water Code relating to  
7 illegal diversion of water.

8 (B) Violation of Section 13260, 13264, 13272, or 13387 of the  
9 Water Code relating to discharge of water.

10 (C) Violation of Section 5650 or 5652 of the Fish and Game  
11 Code relating to waters of the state.

12 (D) Violation of Section 1602 of the Fish and Game Code  
13 relating to rivers, streams, and lakes.

14 (E) Violation of Section 374.8 of the Penal Code relating to  
15 hazardous substances or Section 25189.5, 25189.6, or 25189.7 of  
16 the Health and Safety Code relating to hazardous waste.

17 (F) Violation of Section 2080 of the Fish and Game Code  
18 relating to endangered and threatened species or Section 3513 of  
19 the Fish and Game Code relating to the Migratory Bird Treaty Act,  
20 or Section 2000 of the Fish and Game Code relating to the unlawful  
21 taking of fish and wildlife.

22 (G) Intentionally or with gross negligence causing substantial  
23 environmental harm to public lands or other public resources, such  
24 as groundwater.

25 ~~(H) Theft of groundwater, unauthorized tapping into a water  
26 conveyance or storage infrastructure, or digging an unpermitted,  
27 illegal well.~~

28 ~~(I) The pollution of groundwater by the use of illegal pesticides  
29 or the improper or excessive use of pesticides, rodenticides,  
30 herbicides, or other hazardous chemicals.~~

31 *(e) Notwithstanding subdivision (c), a person 18 years of age  
32 or over who plants, cultivates, harvests, dries, or processes more  
33 than 50 living cannabis plants, or any part thereof, except as  
34 otherwise provided by law, may be punished by imprisonment in  
35 a county jail for a period of not more than six months or by a fine  
36 of not more than five hundred dollars (\$500), or by both the fine  
37 and imprisonment, or by imprisonment pursuant to subdivision  
38 (h) of Section 1170 of the Penal Code if the offense involved any  
39 of the following:*

1     (1) *Theft of groundwater, unauthorized tapping into a water*  
2 *conveyance or storage infrastructure, or digging an unpermitted,*  
3 *illegal well.*

4     (2) *The pollution of groundwater by the use of illegal pesticides*  
5 *or the improper or excessive use of pesticides, rodenticides,*  
6 *herbicides, or other hazardous chemicals.*

7     SEC. 2. No reimbursement is required by this act pursuant to  
8 Section 6 of Article XIII B of the California Constitution because  
9 the only costs that may be incurred by a local agency or school  
10 district will be incurred because this act creates a new crime or  
11 infraction, eliminates a crime or infraction, or changes the penalty  
12 for a crime or infraction, within the meaning of Section 17556 of  
13 the Government Code, or changes the definition of a crime within  
14 the meaning of Section 6 of Article XIII B of the California  
15 Constitution.

AMENDED IN ASSEMBLY APRIL 20, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2728**

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**Introduced by Assembly Member Smith**  
**(~~Coauthor: Assembly Member~~ (Coauthors: Assembly Members**  
***Megan Dahle and Mathis***)

February 18, 2022

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An act to amend Section 26038 of the Business and Professions Code, relating to cannabis.

LEGISLATIVE COUNSEL'S DIGEST

AB 2728, as amended, Smith. Unlawful cannabis activity: penalties. The Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities, including retail commercial cannabis activity. MAUCRSA gives the Bureau of Cannabis Control in the Department of Consumer Affairs the power, duty, purpose, responsibility, and jurisdiction to regulate commercial cannabis activity.

Under existing law, a person engaging in commercial cannabis activity without a license is subject to a civil penalty of up to 3 times the amount of the license fee for each violation. Under existing law, each day of operation without a license is a separate violation.

~~This bill would impose an additional civil penalty on an unlicensed person engaging in commercial activity involving various cannabis products, including cannabis plants in excess of 6 plants, cannabis product, cannabis concentrate, cannabis biomass, and cannabis flower, as specified. increase the civil penalty to 4 times the amount of the license fee. The bill would require the Department of Cannabis Control to waive the civil penalty if the unlicensed person, within 10 business days of issuance of the civil penalty, submits payment equal to the original license fee and all accompanying documentation.~~

AUMA authorizes the Legislature to amend the act to further the purposes and intent of the act with a  $\frac{2}{3}$  vote of the membership of both houses of the Legislature.

This bill would declare that its provisions further the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 26038 of the Business and Professions
- 2 Code is amended to read:
- 3 26038. (a) (1) (A) A person engaging in commercial cannabis
- 4 activity without a license as required by this division shall be
- 5 subject to civil penalties of up to ~~three~~ *four* times the amount of
- 6 the license fee for each violation. Each day of operation shall
- 7 constitute a separate violation of this section.
- 8 ~~(B) In addition to the penalties in paragraph (A), a person~~
- 9 ~~engaging in commercial cannabis activity without a license as~~
- 10 ~~required by this division that involves the following cannabis~~
- 11 ~~products shall be subject to the following civil penalties:~~
- 12 ~~(i) For cannabis operations with more than 6 plants but fewer~~
- 13 ~~than 200 plants:~~
- 14 ~~(I) A fine not exceeding one thousand dollars (\$1,000) for a~~
- 15 ~~first violation.~~
- 16 ~~(II) A fine not exceeding one thousand five hundred (\$1,500)~~
- 17 ~~for a second violation within one year of the first violation.~~
- 18 ~~(III) A fine not exceeding three thousand dollars (\$3,000) for~~
- 19 ~~each additional violation within one year of the first violation.~~
- 20 ~~(ii) For cannabis operations with more than 200 plants:~~

1 ~~(I) A fine not exceeding three thousand dollars (\$3,000) for a~~  
2 ~~first violation.~~

3 ~~(II) A fine not exceeding six thousand dollars (\$6,000) for a~~  
4 ~~second violation within one year of the first violation.~~

5 ~~(III) A fine not exceeding ten thousand dollars (\$10,000) for~~  
6 ~~each additional violation within one year of the first violation.~~

7 ~~(iii) A fine not exceeding fifty dollars (\$50) per package of~~  
8 ~~cannabis product.~~

9 ~~(iv) A fine not exceeding fifty dollars (\$50) per gram of cannabis~~  
10 ~~concentrate.~~

11 ~~(v) A fine not exceeding fifty dollars (\$50) per pound of~~  
12 ~~cannabis biomass.~~

13 ~~(vi) A fine not exceeding two hundred fifty dollars (\$250) per~~  
14 ~~pound of cannabis flower.~~

15 *(B) The department shall waive all unpaid penalties accrued*  
16 *by a person under subparagraph (A) if, within 10 business days*  
17 *of issuance of the penalty, the person submits a payment equal to*  
18 *the original licensing fee required by the department pursuant to*  
19 *Section 26180 and all accompanying documentation.*

20 (2) A person aiding and abetting unlicensed commercial  
21 cannabis activity shall be subject to civil penalties of up to three  
22 times the amount of the license fee for each violation, but in no  
23 case shall the penalty exceed thirty thousand dollars (\$30,000) for  
24 each violation. Each day of operation of unlicensed commercial  
25 cannabis activity that a person is found to have aided and abetted  
26 shall constitute a separate violation of this section.

27 (3) In assessing a penalty, a court shall give due consideration  
28 to the appropriateness of the amount of the civil penalty with  
29 respect to factors the court determines to be relevant, including  
30 the following:

31 (A) The gravity of the violation by the licensee or person.

32 (B) The good faith of the licensee or person.

33 (C) The licensee's or person's history of previous violations.

34 (D) Whether, and to what extent, the licensee or person profited  
35 from the unlicensed cannabis activity.

36 (4) Cannabis associated with a violation described in this  
37 subdivision may be destroyed in accordance with Section 11479  
38 of the Health and Safety Code. The person in violation shall be  
39 responsible for the cost of the destruction of cannabis associated  
40 with their violation.

1 (b) An action for civil penalties brought against a person  
2 pursuant to this division shall not be commenced unless the action  
3 is filed within three years from the date of the violation.

4 (c) All civil penalties imposed and collected pursuant to this  
5 section by a court shall be deposited into the General Fund except  
6 as provided in subdivision (e).

7 (d) For the purposes of this section, in order to prove that a  
8 person aided and abetted an unlicensed cannabis activity all of the  
9 following must be demonstrated:

10 (1) The person was an owner, officer, controlling shareholder,  
11 or in a similar position of authority allowing them to make  
12 command or control decisions regarding the operations and  
13 management of the unlicensed cannabis activity or the property  
14 in which the activity is taking place.

15 (2) The person had actual knowledge that the cannabis activity  
16 was unlicensed and that the cannabis activity required a license.

17 (3) The person provided substantial assistance or encouragement  
18 to the unlicensed cannabis activity.

19 (4) The person’s conduct was a substantial factor in furthering  
20 the unlicensed cannabis activity.

21 (e) (1) If an action for civil penalties is brought against a person  
22 pursuant to this division by the Attorney General on behalf of the  
23 people or on behalf of the department or a participating agency,  
24 the penalty shall first be used to reimburse the Attorney General  
25 and the department or the participating agency for the costs of  
26 investigating and prosecuting the action, including expert fees and  
27 reasonable attorney’s fees, with the remainder, if any, to be  
28 deposited into the General Fund.

29 (2) If the action is brought by a county counsel, the penalty shall  
30 first be used to reimburse the county counsel for the costs of  
31 bringing the action for civil penalties, with the remainder, if any,  
32 to be deposited into the General Fund.

33 (3) If the action is brought by a city attorney or city prosecutor,  
34 the penalty collected shall first be used to reimburse the city  
35 attorney or city prosecutor for the costs of bringing the action for  
36 civil penalties, with the remainder, if any, to be deposited into the  
37 General Fund.

38 (4) Actions for civil penalties pursuant to paragraph (2) of  
39 subdivision (a) shall be brought exclusively by the Attorney  
40 General on behalf of the people, on behalf of the department, or

1 on behalf of the participating agency, or by a city or county counsel  
2 or city prosecutor in a city or county having a population in excess  
3 of 750,000.

4 (f) Notwithstanding subdivision (a), criminal penalties shall  
5 continue to apply to an unlicensed person engaging in commercial  
6 cannabis activity in violation of this division.

7 (g) This section does not limit, preempt, or otherwise affect any  
8 other state or local law, rule, regulation, or ordinance applicable  
9 to the conduct described in subdivision (a), or otherwise relating  
10 to commercial cannabis activities.

11 SEC. 2. The Legislature finds and declares that this act furthers  
12 the purposes and intent of the Control, Regulate and Tax Adult  
13 Use of Marijuana Act.

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AMENDED IN ASSEMBLY APRIL 20, 2022

AMENDED IN ASSEMBLY MARCH 14, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2421**

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**Introduced by Assembly Member Blanca Rubio**

(Principal coauthor: Senator Wilk)

**(Coauthors: Assembly Members Cooley, Lackey, and Mayes)**

*(Coauthor: Senator Rubio)*

February 17, 2022

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An act to amend Sections 5650, 5650.1, and 13103 of the Fish and Game Code, and to amend Section 1052 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2421, as amended, Blanca Rubio. Water: unlicensed cannabis cultivation.

(1) Existing law makes it unlawful to deposit, permit to pass, or place where it can pass, specified pollutants into the waters of this state, including any substance or material deleterious to fish, plant life, mammals, or bird life. A violation of this provision is a crime under the Fish and Game Code. Existing law also subjects a violation of that provision to a civil penalty of no more than \$25,000 for each violation and an additional civil penalty of no more than \$10 for each gallon or pound of material discharged, and requires the civil action to be brought by the Attorney General upon complaint by the Department of Fish and Wildlife or by the district attorney or city attorney in the name of the people of the State of California. Existing law provides that a specified affirmative defense to a violation of the criminal provision does not

apply to an action for civil penalties or injunctive relief pursuant to that civil provision.

This bill would provide that the specified affirmative defense to a violation of the criminal provision also does not apply in any other civil action that alleges a violation resulting from unlicensed cannabis cultivation. The bill would delete the requirement that the Attorney General only bring that civil action upon complaint by the department and would authorize, for a violation resulting from unlicensed cannabis cultivation, the civil action to be brought by a county counsel in the name of the people of the State of California.

(2) Existing law generally requires  $\frac{1}{2}$  of all fines and forfeitures imposed or collected in any court of this state for violations of the Fish and Game Code or any other law providing for the protection or preservation of birds, mammals, fish, reptiles, or amphibians to be deposited in the county treasury of the county in which the violation was committed. Existing law requires those funds and other specified funds to be deposited in a county fish and wildlife propagation fund and authorizes the county board of supervisors to expend those funds for specified purposes.

This bill would additionally authorize expenditures from the fish and wildlife propagation fund of a county for costs incurred by a county counsel in investigating and prosecuting the civil actions specified in paragraph (1) for violations resulting from unlicensed cannabis cultivation.

(3) Under existing law, the diversion or use of water other than as authorized by specified provisions of law is a trespass, subject to specified civil liability and injunctive relief imposed in the superior court in actions brought by the Attorney General upon request of the State Water Resources Control Board. Existing law requires funds recovered pursuant to that provision to be deposited in the Water Rights Fund, which is available upon appropriation by the Legislature for specified purposes.

This bill would authorize, for a violation resulting from unlicensed cannabis cultivation, the civil action to be brought by a county counsel or city attorney in the name of the people of the State of ~~California~~. *California, as specified*. The bill would delete the requirement that the Attorney General only bring the civil action upon request of the board. The bill would require funds recovered pursuant to that provision to, upon appropriation by the Legislature, first be used to reimburse the

Attorney General, city attorney, or county counsel for costs of bringing the action, including reasonable attorney's fees.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 5650 of the Fish and Game Code is  
2 amended to read:

3 5650. (a) Except as provided in subdivision (b), it is unlawful  
4 to deposit in, permit to pass into, or place where it can pass into  
5 the waters of this state any of the following:

6 (1) Any petroleum, acid, coal or oil tar, lampblack, aniline,  
7 asphalt, bitumen, or residuary product of petroleum, or  
8 carbonaceous material or substance.

9 (2) Any refuse, liquid or solid, from any refinery, gas house,  
10 tannery, distillery, chemical works, mill, or factory of any kind.

11 (3) Any sawdust, shavings, slabs, or edgings.

12 (4) Any factory refuse, lime, or slag.

13 (5) Any cocculus indicus.

14 (6) Any substance or material deleterious to fish, plant life,  
15 mammals, or bird life.

16 (b) This section does not apply to a discharge or a release that  
17 is expressly authorized pursuant to, and in compliance with, the  
18 terms and conditions of a waste discharge requirement pursuant  
19 to Section 13263 of the Water Code or a waiver issued pursuant  
20 to subdivision (a) of Section 13269 of the Water Code issued by  
21 the State Water Resources Control Board or a California regional  
22 water quality control board after a public hearing, or that is  
23 expressly authorized pursuant to, and in compliance with, the terms  
24 and conditions of a federal permit for which the State Water  
25 Resources Control Board or a California regional water quality  
26 control board has, after a public hearing, issued a water quality  
27 certification pursuant to Section 13160 of the Water Code. This  
28 section does not confer additional authority on the State Water  
29 Resources Control Board, a California regional water quality  
30 control board, or any other entity.

31 (c) It shall be an affirmative defense to a violation of this section  
32 if the defendant proves, by a preponderance of the evidence, all  
33 of the following:

1 (1) The defendant complied with all applicable state and federal  
2 laws and regulations requiring that the discharge or release be  
3 reported to a government agency.

4 (2) The substance or material did not enter the waters of the  
5 state or a storm drain that discharges into the waters of the state.

6 (3) The defendant took reasonable and appropriate measures to  
7 effectively mitigate the discharge or release in a timely manner.

8 (d) The affirmative defense in subdivision (c) does not apply  
9 and may not be raised in an action for civil penalties or injunctive  
10 relief pursuant to Section 5650.1, or in any other civil action that  
11 alleges a violation under this section resulting from unlicensed  
12 cannabis cultivation.

13 (e) The affirmative defense in subdivision (c) does not apply  
14 and may not be raised by any defendant who has on two prior  
15 occasions in the preceding five years, in any combination within  
16 the same county in which the case is prosecuted, either pleaded  
17 nolo contendere, been convicted of a violation of this section, or  
18 suffered a judgment for a violation of this section or Section  
19 5650.1. This subdivision shall apply only to cases filed on or after  
20 January 1, 1997.

21 (f) The affirmative defense in subdivision (c) does not apply  
22 and may not be raised by the defendant in any case in which a  
23 district attorney, city attorney, or Attorney General alleges, and  
24 the court finds, that the defendant acted willfully.

25 SEC. 2. Section 5650.1 of the Fish and Game Code is amended  
26 to read:

27 5650.1. (a) A person who violates Section 5650 is subject to  
28 a civil penalty of not more than twenty-five thousand dollars  
29 (\$25,000) for each violation.

30 (b) The civil penalty imposed for each separate violation  
31 pursuant to this section is separate, and in addition to, any other  
32 civil penalty imposed for a separate violation pursuant to this  
33 section or any other provision of law, except as provided in  
34 subdivision (j).

35 (c) In determining the amount of a civil penalty imposed  
36 pursuant to this section, the court shall take into consideration all  
37 relevant circumstances, including, but not limited to, the nature,  
38 circumstance, extent, and gravity of the violation. In making this  
39 determination, the court shall consider the degree of toxicity and  
40 volume of the discharge, the extent of harm caused by the violation,

1 whether the effects of the violation may be reversed or mitigated,  
2 and with respect to the defendant, the ability to pay, the effect of  
3 any civil penalty on the ability to continue in business, any  
4 voluntary cleanup efforts undertaken, any prior history of  
5 violations, the gravity of the behavior, the economic benefit, if  
6 any, resulting from the violation, and any other matters the court  
7 determines justice may require.

8 (d) (1) Every civil action brought under this section shall be  
9 brought by the Attorney General, district attorney, or city attorney  
10 in the name of the people of the State of California, and any actions  
11 relating to the same violation may be joined or consolidated.

12 (2) A civil action alleging a violation resulting from unlicensed  
13 cannabis cultivation may be brought by a county counsel in the  
14 name of the people of the State of California.

15 (e) In a civil action brought pursuant to this chapter in which a  
16 temporary restraining order, preliminary injunction, or permanent  
17 injunction is sought, it is not necessary to allege or prove at any  
18 stage of the proceeding that irreparable damage will occur if the  
19 temporary restraining order, preliminary injunction, or permanent  
20 injunction is not issued, or that the remedy at law is inadequate.

21 (f) After the party seeking the injunction has met its burden of  
22 proof, the court shall determine whether to issue a temporary  
23 restraining order, preliminary injunction, or permanent injunction  
24 without requiring the defendant to prove that it will suffer grave  
25 or irreparable harm. The court shall make the determination  
26 whether to issue a temporary restraining order, preliminary  
27 injunction, or permanent injunction by taking into consideration,  
28 among other things, the nature, circumstance, extent, and gravity  
29 of the violation, the quantity and characteristics of the substance  
30 or material involved, the extent of environmental harm caused by  
31 the violation, measures taken by the defendant to remedy the  
32 violation, the relative likelihood that the material or substance  
33 involved may pass into waters of the state, and the harm likely to  
34 be caused to the defendant.

35 (g) The court, to the maximum extent possible, shall tailor a  
36 temporary restraining order, preliminary injunction, or permanent  
37 injunction narrowly to address the violation in a manner that will  
38 otherwise allow the defendant to continue business operations in  
39 a lawful manner.

1 (h) All civil penalties collected pursuant to this section shall not  
2 be considered fines or forfeitures as defined in Section 13003 and  
3 shall be apportioned in the following manner:

4 (1) Fifty percent shall be distributed to the county treasurer of  
5 the county in which the action is prosecuted. Amounts paid to the  
6 county treasurer shall be deposited in the county fish and wildlife  
7 propagation fund established pursuant to Section 13100.

8 (2) Fifty percent shall be distributed to the department for  
9 deposit in the Fish and Game Preservation Fund. These funds may  
10 be expended to cover the costs of legal actions or for any other  
11 law enforcement purpose consistent with Section 9 of Article XVI  
12 of the California Constitution.

13 (i) Except as provided in subdivision (j), in addition to any other  
14 penalty provided by law, a person who violates Section 5650 is  
15 subject to a civil penalty of not more than ten dollars (\$10) for  
16 each gallon or pound of material discharged. The total amount of  
17 the civil penalty shall be reduced for every gallon or pound of the  
18 illegally discharged material that is recovered and properly  
19 disposed of by the responsible party.

20 (j) A person shall not be subject to a civil penalty imposed under  
21 this section and to a civil penalty imposed pursuant to Article 9  
22 (commencing with Section 8670.57) of Chapter 7.4 of Division 1  
23 of Title 2 of the Government Code for the same act or failure to  
24 act.

25 SEC. 3. Section 13103 of the Fish and Game Code is amended  
26 to read:

27 13103. Expenditures from the fish and wildlife propagation  
28 fund of any county may be made only for the following purposes:

29 (a) Public education relating to the scientific principles of fish  
30 and wildlife conservation, consisting of supervised formal  
31 instruction carried out pursuant to a planned curriculum and aids  
32 to education such as literature, audio and video recordings, training  
33 models, and nature study facilities.

34 (b) Temporary emergency treatment and care of injured or  
35 orphaned wildlife.

36 (c) Temporary treatment and care of wildlife confiscated by the  
37 department as evidence.

38 (d) Breeding, raising, purchasing, or releasing fish or wildlife  
39 that are to be released upon approval of the department pursuant

1 to Sections 6400 and 6401 onto land or into waters of local, state,  
2 or federal agencies or onto land or into waters open to the public.

3 (e) Improvement of fish and wildlife habitat, including, but not  
4 limited to, construction of fish screens, weirs, and ladders; drainage  
5 or other watershed improvements; gravel and rock removal or  
6 placement; construction of irrigation and water distribution  
7 systems; earthwork and grading; fencing; planting trees and other  
8 vegetation management; and removal of barriers to the migration  
9 of fish and wildlife.

10 (f) Construction, maintenance, and operation of public hatchery  
11 facilities.

12 (g) Purchase and maintain materials, supplies, or equipment for  
13 either the department's ownership and use or the department's use  
14 in the normal performance of the department's responsibilities.

15 (h) Predator control actions for the benefit of fish or wildlife  
16 following certification in writing by the department that the  
17 proposed actions will significantly benefit a particular wildlife  
18 species.

19 (i) Scientific fish and wildlife research conducted by institutions  
20 of higher learning, qualified researchers, or governmental agencies,  
21 if approved by the department.

22 (j) Reasonable administrative costs, excluding the costs of audits  
23 required by Section 13104, for secretarial service, travel, and  
24 postage by the county fish and wildlife commission when  
25 authorized by the county board of supervisors. For purposes of  
26 this subdivision, "reasonable cost" means an amount that does not  
27 exceed 15 percent of the average amount received by the fund  
28 during the previous three-year period, or ten thousand dollars  
29 (\$10,000) annually, whichever is greater, excluding any funds  
30 carried over from a previous fiscal year.

31 (k) Contributions to a secret witness program for the purpose  
32 of facilitating enforcement of this code and regulations adopted  
33 pursuant to this code.

34 (l) Costs incurred by the district attorney or city attorney in  
35 investigating and prosecuting civil and criminal actions for  
36 violations of this code, as approved by the department.

37 (m) Costs incurred by a county counsel in investigating and  
38 prosecuting an action for civil penalties, injunctive relief, or civil  
39 penalties and injunctive relief pursuant to Section 5650.1 resulting  
40 from unlicensed cannabis cultivation.

1 (n) Other expenditures, approved by the department, for the  
2 purpose of protecting, conserving, propagating, and preserving  
3 fish and wildlife.

4 SEC. 4. Section 1052 of the Water Code is amended to read:

5 1052. (a) The diversion or use of water subject to this division  
6 other than as authorized in this division is a trespass.

7 (b) (1) An action for the issuance of injunctive relief as may  
8 be warranted by way of temporary restraining order, preliminary  
9 injunction, or permanent injunction may be brought by the Attorney  
10 General, in the name of the people of the State of California, where  
11 the diversion or use of water is threatened, is occurring, or has  
12 occurred.

13 (2) (A) A civil action for a violation under this section resulting  
14 from unlicensed cannabis cultivation may also be brought by a  
15 city attorney or county counsel in the name of the people of the  
16 State of California.

17 (B) *A city attorney or county counsel shall notify the board and*  
18 *the regional board with jurisdiction over the city or county of the*  
19 *intent to file the action at least 15 days prior to commencing the*  
20 *action.*

21 (c) Any person or entity committing a trespass as defined in this  
22 section may be liable in an amount not to exceed the following:

23 (1) If the unauthorized diversion or use occurs in a critically  
24 dry year immediately preceded by two or more consecutive below  
25 normal, dry, or critically dry years, or during a period for which  
26 the Governor has issued a proclamation of a state of emergency  
27 under the California Emergency Services Act (Chapter 7  
28 (commencing with Section 8550) of Division 1 of Title 2 of the  
29 Government Code) based on drought conditions, the sum of the  
30 following:

31 (A) One thousand dollars (\$1,000) for each day in which the  
32 trespass occurs.

33 (B) Two thousand five hundred dollars (\$2,500) for each  
34 acre-foot of water diverted or used in excess of that diverter's  
35 water rights.

36 (2) If the unauthorized diversion or use is not described by  
37 paragraph (1), five hundred dollars (\$500) for each day in which  
38 the unauthorized diversion or use occurs.

39 (d) Civil liability for a violation of this section may be imposed  
40 by the superior court or the board as follows:



1 (1) The superior court may impose civil liability in an action  
2 brought by the Attorney General to impose, assess, and recover  
3 any sums pursuant to subdivision (c). In determining the  
4 appropriate amount, the court shall take into consideration all  
5 relevant circumstances, including, but not limited to, the extent of  
6 harm caused by the violation, the nature and persistence of the  
7 violation, the length of time over which the violation occurs, and  
8 the corrective action, if any, taken by the violator.

9 (2) The superior court may impose civil liability in an action  
10 for a violation under this section resulting from unlicensed cannabis  
11 cultivation brought by a city attorney or county counsel to impose,  
12 assess, and recover any sums pursuant to subdivision (c). In  
13 determining the appropriate amount, the court shall take into  
14 consideration all relevant circumstances, including, but not limited  
15 to, the extent of harm caused by the violation, the nature and  
16 persistence of the violation, the length of time over which the  
17 violation occurs, and the corrective action, if any, taken by the  
18 violator.

19 (3) The board may impose civil liability in accordance with  
20 Section 1055.

21 (e) (1) Upon appropriation by the Legislature, funds recovered  
22 pursuant to this section shall first be used to reimburse the Attorney  
23 General, city attorney, or county counsel for costs of bringing the  
24 action, including reasonable attorney's fees.

25 (2) Except as specified in paragraph (1), all funds recovered  
26 pursuant to this section shall be deposited in the Water Rights Fund  
27 established pursuant to Section 1550.

28 (f) The remedies prescribed in this section are cumulative and  
29 not alternative.

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# Agenda Item

DATE: April 27, 2022  
TO: Board of Directors  
FROM: Michael Minkler, General Manager  
Brad Arnold, Water Resources Program Manager  
SUBJECT: Slurry Line Water Service Update: Wheeling Agreement with UWPA

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## **RECOMMENDED ACTION:**

Motion: \_\_\_/\_\_\_ to adopt Resolution No. 2022\_\_\_\_\_ executing the Water Wheeling Agreement between the Calaveras County Water District and the Utica Water and Power Authority.

## **SUMMARY:**

In 2018, Calaveras County Water District (CCWD) obtained the real property and right-of-way easements for the old Cataract Mine Cement Slurry Line (Slurry Line) from the Lehigh-Hanson Aggregate mining company. The roughly 7-inch diameter Slurry Line was constructed in the early 1970's as a gravity-fed limestone slurry conveyance bringing water from a turnout on the Utica Ditch and limestone from a quarry near the Stanislaus River towards the company's primary operations in San Andreas, a total distance of 18.7 miles. The Slurry Line was taken out of operation in the 1980's but remains in good condition and can likely be repurposed as a raw water supply line for potential non-potable water users. CCWD has secured the water rights to supply landowners in areas surrounding the pipeline to deliver up to 1,000 acre-feet per year (around 500 acre-feet during irrigation months) and has been investigating necessary infrastructure improvements to determine how it could deliver this raw water for irrigation, livestock, or croplands use. This memo provides an update regarding the need to use Utica Water and Power Authority (UWPA) facilities to convey CCWD's water made available under CCWD water rights to the Slurry Line turnout, and the ongoing engagement with potential slurry line customers.

## **CCWD-UWPA Wheeling Agreement**

CCWD and UWPA have developed a draft wheeling agreement to convey CCWD's post-1914 water rights from the Stanislaus River through the Utica Ditch to supply the Slurry Line. Raw water would be brought from the Tunnel Tap off the Collierville Tunnel to the Slurry Line turnout using approximately 12.2 miles of UWPA's ditch and flume system. Wheeling charges are based on certain UWPA staffing, maintenance, and operations expenses needed to facilitate the additional water conveyance. As proposed, the wheeling charge would be \$63.29 per acre-foot of CCWD water conveyed (gross amount before losses), with an additional Administrative Fee of \$340 per year, and an additional Operations and Maintenance Fee of \$216/year. CCWD anticipates passing the applicable wheeling charge directly to potential Slurry Line customers. Other conditions address the need for turnout infrastructure upgrades to facilitate UWPA delivery, as well as maintenance and outage provisions. The draft agreement is provided in Attachment A.

## Potential Customer Base

In late 2020, CCWD released a survey to landowners with property along the Slurry Line to gauge interest in potential water service. CCWD obtained important information from the survey responses and from an online workshop held during that survey period. Following that effort, CCWD ultimately decided to initially focus on potential water service to landowners located from the Utica Ditch inlet to boundary of UPUD's service territory near Murphys. This "Phase 1" reach represents the greatest concentration of potential customers while also limiting right-of-way constraints and infrastructure upgrade expenses. The Slurry Line was tested by CCWD through this portion in 2019, and again in March 2022, and found that up to 750 gallons per minute (gpm) delivery capability could be made available.

On March 14, 2022, CCWD sent out another round of outreach surveys to landowners who are within the Phase 1 reach and expressed interest in water service in the earlier survey. This survey is being used to gather additional information related to crop demands, desired flow rates and pressures, and willingness to install water storage facilities. CCWD has been receiving feedback from these surveys (anticipated through late-April), used to assist with the development of customer water service agreements and to setup wheeling operations with UWPA.

Approval of the wheeling agreement is a big step toward making water available to irrigators. More work is needed to assess existing service area constraints and operational conditions and to secure approval from the Northern California Power Agency (NCPA) regarding water rights accounting methodology. Staff will update the Board of Directors as new info is received and as progress is made towards the establishment of a Slurry Line service area rate, NCPA negotiations, and the potential start date for Phase 1 water supply deliveries.

## FINANCIAL CONSIDERATIONS:

Wheeling charges and infrastructure improvements for the Slurry Line will be passed through to the irrigators who utilize the water.

*Attachments:*        A) Resolution No. 2022-\_\_\_ executing the Water Wheeling Agreement between the Calaveras County Water District and the Utica Water and Power Authority.  
                              B) CCWD-UWPA Wheeling Agreement

**RESOLUTION NO. 2022-**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE CALAVERAS COUNTY WATER DISTRICT**

**WATER WHEELING AGREEMENT BETWEEN THE CALAVERAS COUNTY WATER  
DISTRICT AND THE UTICA WATER AND POWER AUTHORITY**

**WHEREAS**, in 2018, the Calaveras County Water District (CCWD) obtained the real property and right-of-way easements for the Cataract Cement Slurry Line (Slurry Line) from the Lehigh Southwest Cement Company. The Slurry Line ceased operations in the early 1980s, however, CCWD’s assessment indicates it can be repurposed as a raw water supply pipeline to provide water to currently unserved agricultural users located in Calaveras County; and

**WHEREAS**, CCWD is unable to convey water made available under its North Fork Stanislaus River Watershed water rights to the Slurry Line without the use of Utica Water and Power Authority (UWPA) infrastructure from the Collierville Tunnel Tap to the Slurry Line initial point of diversion from the Utica Ditch (Slurry Line Turnout); and

**WHEREAS**, water conveyance capacity is often available in the UWPA system to convey non-UWPA water, and per California Water Code §1811(c) and 1814 is therefore available for CCWD to convey its water through this infrastructure to the Slurry Line Turnout, a process commonly referred to as “wheeling”; and

**WHEREAS**, UWPA is entitled to recover certain expenses related to staff, maintenance, and operations as a result of facilitating the wheeling of CCWD water; and

**WHEREAS**, CCWD and UWPA share an objective of making water available to the Slurry Line service area, subject to conditions that avoid adverse impacts to UWPA water supplies and operations.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the CALAVERAS COUNTY WATER DISTRICT that the General Manager is hereby authorized to sign the Wheeling Agreement, attached hereto, and made a part hereof, and any other pertinent documents related thereto.

**PASSED AND ADOPTED** this 27<sup>th</sup> day of April, 2022 by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

CALAVERAS COUNTY WATER DISTRICT

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Cindy Secada, President  
Board of Directors

ATTEST:

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Rebecca Hitchcock  
Clerk to the Board

**WATER WHEELING AGREEMENT BETWEEN  
THE CALAVERAS COUNTY WATER DISTRICT AND  
THE UTICA WATER AND POWER AUTHORITY**

This Agreement is made and entered into effective \_\_\_\_\_, 20\_\_\_ between the Calaveras County Water District (“CCWD”) and the Utica Water and Power Authority, a joint powers authority (“UWPA”), referenced singly as “Party” or together as the “Parties,” and incorporating the following recitals:

- A. CCWD is a retail water supplier whose jurisdiction covers Calaveras County, with portions of its water supply service areas and infrastructure located in the Stanislaus River Watershed; and
- B. CCWD holds several post-1914 appropriative surface water diversion and storage rights to the North Fork Stanislaus River and its tributaries, collectively referred to as the “CCWD Water Rights”; and
- C. UWPA is a wholesale and retail water and wholesale power agency that receives a substantial portion of its water through the “Tunnel Tap” via the Collierville Tunnel on the North Fork Stanislaus River. The Tunnel Tap is owned by UWPA, while other connected infrastructure is owned by CCWD and operated by the Northern California Power Agency (“NCPA”); and
- D. UWPA receives its water pursuant to Attachment A of the “Amended and Restated Agreement Between Northern California Power Agency and Calaveras County Water District Regarding Utica/Angels Hydroelectric Projects,” mostly recently amended by the Parties and NCPA on January 1, 2008. (“NCPA Agreement”). The “Attachment A Water” is based on the combined flow of Mill Creek and water delivered by NCPA to UWPA from the North Fork Stanislaus River via the Tunnel Tap; and
- E. In 2018, CCWD obtained the real property and right-of-way easements for the Cataract Cement Slurry Line (“Slurry Line”) from the Lehigh Southwest Cement Company. The Slurry Line ceased operations in the early 1980s, however, CCWD’s assessment indicates it can be repurposed as a raw water supply pipeline to provide water to currently unserved agricultural users located in Calaveras County; and
- F. CCWD is unable to convey water to the Slurry Line without the use of UWPA’s infrastructure from the Tunnel Tap to its initial point of diversion from the Utica Ditch (“Slurry Line Turnout”); and
- G. Section 5.5 of the NCPA Agreement permits UWPA to divert and convey water made available via the CCWD Water Rights through its system, subject to NCPA approval; and
- H. State Water Resources Control Board Order 97-05 (“SWRCB Order”) permits CCWD to use the CCWD Water Rights within the places of use identified on the February 2, 1996 map referenced as Figure 2 and titled “Calaveras County Water District Petition for Change, Addition of Points of Diversion and Rediversion”. These places of use include areas serviceable by the Slurry Line (“Slurry Line Service Area”); and
- I. Water conveyance capacity is often available in the UWPA infrastructure to convey non-UWPA water, hereinafter referred to as “Unused Capacity”, as defined in Water Code Sections 1811(c) and 1814 and commonly referred to as “wheeling services”. CCWD may use the Unused Capacity to facilitate diversion and conveyance of the CCWD Water Rights (“CCWD Water”) to the Slurry Line Turnout, subject to conditions that avoid adverse impacts to UWPA water supplies and operations; and

J. The Parties share an objective of making water available to the Slurry Line Service Area. As such, the Parties resolve to work cooperatively to wheel CCWD Water through UWPA's system to the Slurry Line Turnout.

**The Parties agree to the following terms:**

### **1. Agreement Term**

This Agreement is effective once fully executed and will remain in effect until terminated by either Party, subject to Section 10 of this Agreement.

### **2. Wheeling Services**

- (a)** This Agreement is entered into pursuant to and subject to Water Code Sections 1810 – 1814, Joint Use of Capacity in Water Conveyance Facilities.
- (b)** Priority of Use of UWPA's Water Conveyance System. The parties agree that UWPA has the first priority to use its water conveyance system because UWPA owns that system.
- (c)** When requested by CCWD, UWPA agrees to wheel CCWD water at those times when Unused Capacity is available via UWPA's water conveyance system from the Tunnel Tap to the Slurry Line Turnout at a rate of up to three cubic feet per second ("CFS").
- (d)** As used in this Agreement, the term "Slurry Line Turnout Infrastructure" means all of the civil works and equipment needed to connect UWPA's water conveyance system to the Slurry Line, including but not limited to, intake pipe, foundation, vault, and related civil works, piping, valves, meter, water logger, and associated communications and programming systems, needed by UWPA to carry out its duties and obligations under this Agreement.
- (e)** If the Parties agree that certain upgrades to the Slurry Line Turnout are needed to implement this agreement, CCWD will be responsible for all mutually approved work, materials and equipment costs, without limitation, incurred to upgrade, repair, or replace the existing Slurry Line Turnout Infrastructure.
- (f)** Once the infrastructure upgrades have been constructed and installed to both Parties' approval, UWPA agrees to maintain the Slurry Line Turnout Infrastructure, provided that all mutually approved costs to replace elements of the Slurry Line Turnout Infrastructure will be split equally between UWPA and CCWD.
- (g)** Should UWPA later determine that a smart meter, water logger, and associated communications and programming are needed for water monitoring and accounting, CCWD agrees to pay for the purchase and installation of such improvements.
- (h)** As between the Parties, downstream of the UWPA meter at the Slurry Line Turnout, CCWD will be solely responsible for the Slurry Line and all other CCWD water and infrastructure, for their cost and operation and for any liabilities arising from or relating to their operation, and for all

necessary easements related thereto.

- (i) The Parties acknowledge the water delivered to the Slurry Line Turnout is raw, non-potable water and that UPWA has no responsibility for the quality of the water delivered.
- (j) UWPA will wheel and deliver CCWD Water to the Slurry Line Turnout provided that there is Unused Capacity and sufficient UWPA carriage water in addition to the CCWD Water at the Slurry Line Turnout.

### **3. Schedule of Water Deliveries from NCPA and Wheeling Services**

- (a) Point of Delivery. The Point of Delivery of CCWD Water is the meter at the Slurry Line Turnout on the Lower Utica Canal.
- (b) Delivery Schedules. The parties agree that the CCWD Water must be delivered by NCPA to UWPA's water conveyance system and that UWPA is required to coordinate with and account to NCPA for the receipt of that water. The amounts, times, and rates of delivery of CCWD water at the Point of Delivery will be in accordance with the availability of water under the applicable water rights. Water deliveries and accounting will be coordinated as follows:
  - (1) At least seven business days prior to first day of each month, CCWD will provide UWPA with an estimated quantity of water needed for Slurry Line deliveries for the upcoming month. UWPA may adjust its Tunnel Tap diversions accordingly to meet the Slurry Line diversions.
  - (2) UWPA will record the meter reading at the Slurry Line Turnout on the first calendar day of each month and report any Slurry Line diversions to NCPA as part of its monthly reporting. Subject to NCPA approval, Slurry Line diversions will be supplied by CCWD Water and will not count against UWPA's Attachment A entitlement.
- (c) Measurement of Water Delivered.
  - (1) UWPA will divert CCWD's water at the Tunnel Tap. The Parties agree that water conveyance losses occur in that reach. The Parties further agree that UWPA will assume a 5.0% conveyance loss in UWPA's conveyance system between the Tunnel Tap and the Slurry Line. UWPA will measure water to be delivered to CCWD at the Slurry Line Turnout. To account for the 5% conveyance losses, the Parties agree that UWPA will add 5.0% to the amount of water measured at the Slurry Line Turnout and CCWD agrees to pay for those conveyance losses at the applicable Water Wheeling Fee.
  - (2) UWPA will keep and maintain accurate and complete measurement records. In accordance with Section 2 and subject to Section 2(g), UWPA will install, operate, and maintain water metering equipment that are reasonably acceptable to both Parties at the Point of Delivery. The meter shall be examined, tested and serviced regularly by UWPA at CCWD's cost to maintain its accuracy in accordance with the meter manufacturer's written recommendations. CCWD may inspect the metering equipment and the measurement records during regular business hours upon reasonable notice. CCWD has the right to hire an independent testing company to

verify the accuracy of the meter at CCWD's expense and UWPA has the right to be present when the testing occurs and to receive a copy of the test report.

#### **4. UWPA System Repairs**

(a) CCWD acknowledges that UWPA retains full discretion to schedule water system maintenance outages during the November 1 to April 30 "Off Season" each year.

(b) UWPA System Repairs during the May 1 to October 31 period.

(1) *Non-Emergency Repairs Upstream of the Slurry Line Turnout.* UWPA will provide CCWD with written notice of the unavailability of Slurry Line deliveries due to non-emergency repairs at least 10 calendar days in advance. For scheduled water conveyance system outages upstream of the Slurry Line Turnout where service must be interrupted completely (e.g., repairs to  $\frac{3}{4}$  Mile Flume), when such information is reasonably available, UWPA will provide CCWD with at least 72 hours advanced notice of any time-period during the outage when water will be made available to UWPA's member agencies. UWPA agrees to make Slurry Line deliveries available to CCWD during such times so long as such CCWD Water deliveries do not interfere with UWPA's outage schedule or with UWPA's ability to meet the needs of its member agencies and other customers.

(2) *Non-Emergency Repairs Downstream of the Slurry Line Turnout.* Unless operational considerations make water deliveries to the Slurry Line Turnout impractical, UWPA will make water deliveries reasonably available to the Slurry Line Turnout during system outages for maintenance work in UWPA's system that is downstream of the Slurry Line.

(3) *Emergency Repairs.* When, in the reasonable discretion of UWPA, it is necessary to make emergency repairs to the water diversion or conveyance infrastructure used for wheeling under this Agreement, or when necessary, because of accident or other emergency conditions, or when UWPA determines it has no Unused Capacity available to wheel water due to unforeseen circumstances, UWPA may temporarily suspend the conveyance of CCWD Water. UWPA must immediately notify CCWD and NCPA of any temporary suspension of conveyance and take reasonable steps to promptly restore service after the emergency repairs have been completed.

(4) *No Liability.* UWPA will not be liable for damages to CCWD or its Slurry Line Service Area customers as a result of the need to make repairs under this subsection 4(b) and at any time during the November 1 to April 30 Off Season.

(5) *Recommencing Wheeling Operations.* Suspension of UWPA wheeling services due to the conditions presented in this subsection 4(b) will not constitute termination of this Agreement and UWPA agrees to make reasonable efforts to recommence wheeling operations as soon as practicable.

#### **5. Wheeling Compensation**



- (a) CCWD will compensate UWPA for all CCWD Water wheeled by UWPA under this Agreement (“Wheeling Charge”) as measured in accordance with Section 3(c)(1). The Wheeling Charge will be the same as the water charge per acre-foot, Administration Fee, and Operations and Maintenance Fee, that are paid by UWPA irrigation water contractors who divert above Utica’s Murphys Powerhouse. These charges are determined annually by the UWPA Board of Directors and are described in Exhibit A to this Agreement.
- (b) UWPA will invoice CCWD monthly for Wheeling Charges. UWPA will document the monthly volumetric conveyance of CCWD Water to the UWPA-metered Slurry Line Turnout, include the Wheeling Charge rate and sub-total for the delivery, and include a total Wheeling Charge owed to UWPA by CCWD. CCWD will pay the invoice within 30 days after billing, and if not so paid, UWPA may assess a late penalty up to 3% of the amount due. UWPA can temporarily suspend deliveries if a balance remains unpaid after 60 days, but will reinstate service within 48 hours of payment in full.
- (c) Any studies, reports, and additional information required of UWPA by any public agency or regulatory authority necessary for the implementation of this Agreement and not specified in this Agreement shall be performed at CCWD’s expense.

## **6. NCPA**

- (a) CCWD is responsible for ensuring that it obtains any necessary approvals from NCPA prior to wheeling any CCWD Water through the UWPA system. UWPA will make all reasonable efforts in good faith to assist in obtaining necessary approvals for this agreement from NCPA.
- (b) Once CCWD obtains NCPA’s approval for delivery of any CCWD water through the UWPA water conveyance system and the Slurry Line Turnout Infrastructure has been constructed, paid for by CCWD, and in commercial operation, whichever occurs last, UWPA will coordinate with NCPA on the delivery of CCWD water to UWPA for wheeling to CCWD.

## **7. Accounting and Reports Required under the Respective Parties’ Water Rights**

Each Party shall be solely responsible for all water rights accounting and reporting related to its own water rights.

## **8. Regulatory Approvals**

Each party is responsible for ensuring that all of its respective legal requirements necessary for the implementation of this Agreement are met and complied with. This may include obtaining any required permissions, permits, or approvals, and complying with the California Environmental Quality Act or any other law. CCWD shall be responsible for all costs incurred by each party to comply with this section. UWPA shall not be required to provide wheeling services if all required regulatory approvals have not been obtained and renewed as necessary.

## **9. General Indemnity**

Each party agrees to protect, defend, indemnify, and hold harmless the other party, its officers, agents, servants, employees, and consultants from and against any and all losses, claims, liens, demands and

causes of action of every kind and character on account of personal injuries or death or damages to property and, without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, connected with, or arising directly or indirectly out of the performance or non-performance by the indemnifying party hereunder, except to the extent caused by the negligence or willful misconduct of the other party. Neither party shall be liable for the other party or to any third party for loss of profits or for economic, incidental consequential damages.

#### **10. Termination Notice**

- (a) Notice of planned Agreement termination shall be provided by the party desiring termination to the other party at least 60 days prior to the effective termination date. All outstanding payments and indemnity obligations under this Agreement shall survive the effective termination date.

#### **11. Assignment**

- (a) Each party has the right to assign its rights and obligations of this Agreement to a responsible entity subject to the prior written consent of the other party, which consent shall not be unreasonably withheld.
- (b) CCWD shall have the right to assign all of its rights and obligations of CCWD under this Agreement to any responsible entity assuming ownership of CCWD's Slurry Line or CCWD's Water Rights applicable to the Slurry Line without UWPA's consent.
- (c) UWPA shall have the right to assign all of its rights and obligations under this Agreement to any responsible entity assuming ownership of UWPA's water conveyance system without CCWD's consent.

#### **12. Counterparts**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement will not be effective until the execution and delivery between each of the parties of at least one set of counterparts; the parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely execute counterparts will be sufficient proof of this Agreement.

#### **13. Modifications**

All modifications or amendments to this Agreement shall be in writing and signed by CCWD and UWPA.

Each Party certifies that this Agreement has been approved by its respective Board of Directors and it enters into this Agreement by its authorized representative who signs below.

**UTICA WATER AND POWER AUTHORITY**

**CALAVERAS COUNTY WATER DISTRICT**

By: \_\_\_\_\_  
Joel Metzger, General Manager

By: \_\_\_\_\_  
Michael Minkler, General Manager

## EXHIBIT A

### Water Wheeling Fee Structure

The “Wheeling Charge” per acre foot of water UWPA wheels for CCWD will be in the same amount as UWPA’s irrigation water contractor charges above the Murphys Powerhouse. In addition, CCWD will be responsible for paying administrative and operations and maintenance charges as set by the UWPA Board of Directors. These charges are determined annually by the UWPA Board of Directors prior to the beginning of the irrigation season on or about May 1. UWPA will provide CCWD with written notification of increases to water wheeling, administration, and operations and maintenance charges within 30 days of UWPA Board approval of such charges.

Under this Water Wheeling Agreement, CCWD is responsible for the following fees and charges:

1. Charge Per Acre Foot of Water
2. Annual Administrative Fee
3. Annual Operations and Maintenance Fee

As of March 2022, the following fees and charges are in place:

1. Water Wheeling Fee: \$63.29 per acre foot
2. Administrative Fee: \$340/year
3. Operation and Maintenance Fee: \$216/year