

Monterey County District Attorney's Cannabis Activity Report Fiscal Year 2017-18

During Fiscal Year 2017-18 (FY 17-18), the District Attorney's Office (DAO) received 58 cases for review related to the cultivation, transportation, or sales of cannabis. This was an increase of 21 cases referred during Fiscal Year 2016-2017. Of these 58 cases submitted, charges were filed in 55 of the cases, 19 of which remain open.

Cases related to manufacturing of concentrated cannabis are not included in this report. The charging section for cannabis manufacturing is the same as for manufacturing of any controlled substance therefore statistics related to manufacturing are not readily available.

In addition to cases referred from the 12 outside municipal agencies, the District Attorney's Bureau of Investigation also initiated cases for illegal cannabis activities for both cultivation and workers' compensation fraud. The Bureau of Investigation also assisted local and state agencies in the preparation and service of search warrants related to illegal cannabis activity.

Recommendation

It is recommended that the Board of Supervisors:

Consider additional funding to support increased investigative and prosecutorial resources to ensure a lawful and safe cannabis industry within Monterey County, to wit, a Civil Deputy District Attorney and an additional Civil District Attorney Investigator.

Discussion

During FY 17-18, 58 referrals related to cannabis cultivation, sales, and/or transportation, were received from law enforcement agencies including but not limited to the Monterey County Sheriff's Office (MCSO), California Highway Patrol, California Fish & Wildlife, Salinas Police Department, Marina Police Department, Monterey Police Department, Greenfield Police Department, King City Police Department, and Seaside Police Department. These referrals demonstrate that there has been an increase in enforcement activity related to unlicensed cannabis operations.

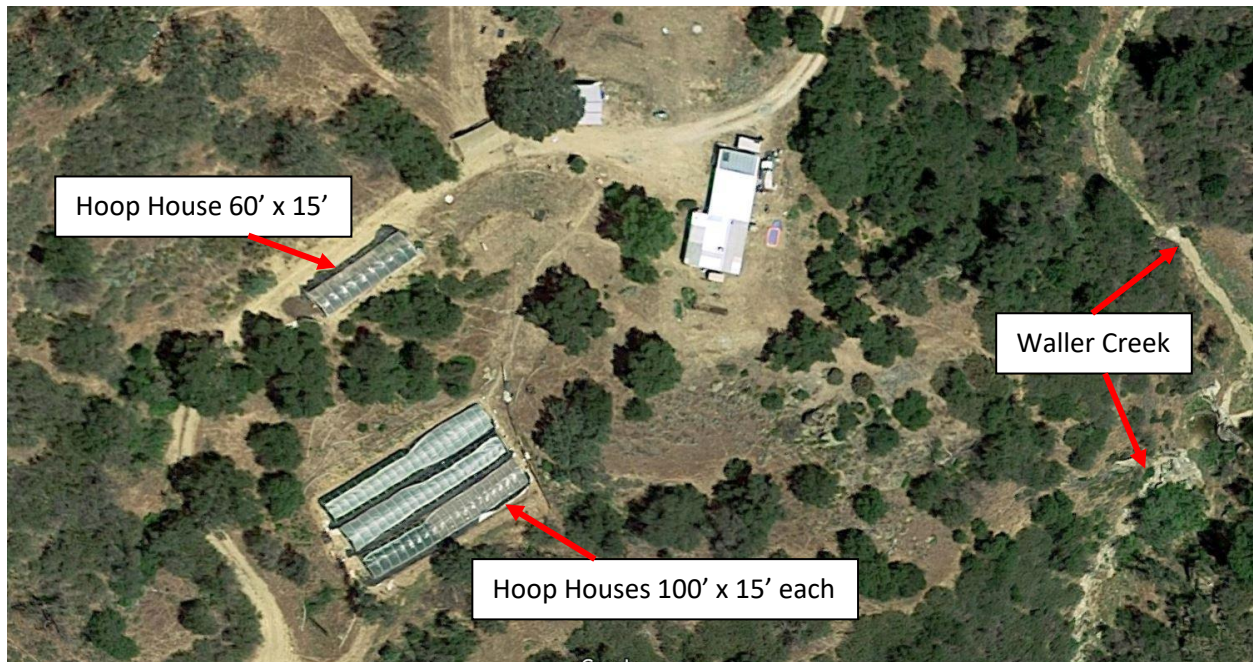
In approximately late May 2018, during an ad-hoc cannabis committee meeting, the need for enforcement directed at illegal operations was deemed to be critically important. Because the MCSO was unable to conduct enforcement operations at this time, the District Attorney agreed to undertake a short enforcement operation. The District Attorney agreed to reassign District Attorney Investigators (DAI's) from their regular duties for no more than 6 weeks on the

condition that the DAO would be reimbursed for any overtime resulting from the operations. The DA assigned three DAI's to search for and eradicate illegal cannabis cultivation sites throughout Monterey County. The DAI's initially focused their attention on South Monterey County using a list of residences that had been sent a notice from the County that illegal commercial cannabis activity may be occurring on their property.

DAI's spent two days examining 23 sites on the list and found only one site growing less than 50 plants. Working with Wardens from California Fish and Wildlife, DAI's located and identified three grow sites in South Monterey County that were cultivating cannabis. The investigators surveilled the sites while writing search warrants for the locations, verifying that no county or state permits had been issued for the property, and attempting to identify the owners of the property as well as the growers prior to service of the search warrant. Search warrants were subsequently served on each of the properties as described below:

Warrant #1

On May 30, 2018, a search warrant was served on Copperhead Road. The grower presumably had cut down 1,080 plants in the 48 hours prior to the search warrant. No one was present on the property at the time the warrant was served. The plants were located on a neighboring property and the weight of the destroyed material was approximately 2,000 lbs. The four grow houses encompassed 5,357 sq. ft. of canopy space. A total of four individuals, one being the property owner, were observed working the hoop houses when surveillance was being done on the property prior to the warrant service. Additional investigative follow up was done after the warrant service to attempt to locate and contact the property owner for a statement. This case has been submitted to the District Attorney's Office for review for criminal and civil penalties. The photos below show the extent of the damage to the environment and the condition of the grow site.







34 personnel from the following agencies assisted in the service of this warrant:

- District Attorney's Office – 1 Captain and 10 Investigators
- California Fish and Wildlife – 1 Lieutenant, 3 Wardens, and 1 Environmental Scientist
- (1) Dump trailer
- Monterey County Parks – 2 Park Rangers
- Monterey County Code Enforcement – 1 Inspector
- Monterey County Environmental Health – 3 Inspectors
- Monterey County Agricultural Commission – 1 Commissioner
- Monterey County Animal Control – 1 Officer
- California Department of Toxic Substance Control – 1 Investigator and 1 Scientist
- Monterey County Public Works – 8 employees
- (1) Two Dump Trucks
- (2) Loader
- (3) Pickup Truck with porta potty trailer

Had this grow site been legal, it would be classified by Cal Cannabis as a Small Mixed-light Tier 1 site. The application fees for this size grow are \$1,310, and the permit fees once approved are \$11,800. Unpaid taxes to the County of Monterey based upon the tax rate at the time, total \$80,355. There were multiple County Code and Environmental Health violations noted and Notices of Violations were issued by each department.

Warrant #2

On June 6, 2018, search warrants were served on two separate locations on Jolon Road. The first included three grow houses with plants. A total of 687 juvenile plants were removed totaling 168 lbs. The canopy area was calculated at 1,728 sq. ft. There were four individuals on the property at the time the warrant was served, and two firearms were located inside the resident's trailers. Digital electronics seized during the service of this warrant were reviewed for evidence related to the grow site. This case has been submitted for review for criminal and civil penalties.

Had this been a legal grow site, this grow would be classified as a Specialty Mixed-light Tier 1 site. The application fees to Cal Cannabis are \$655, with the annual license fee of \$5,900. Unpaid taxes to the County of Monterey at \$15 per square foot total \$25,920. Multiple County Code and Environmental Health violations were noted, and Notice of Violations issued.





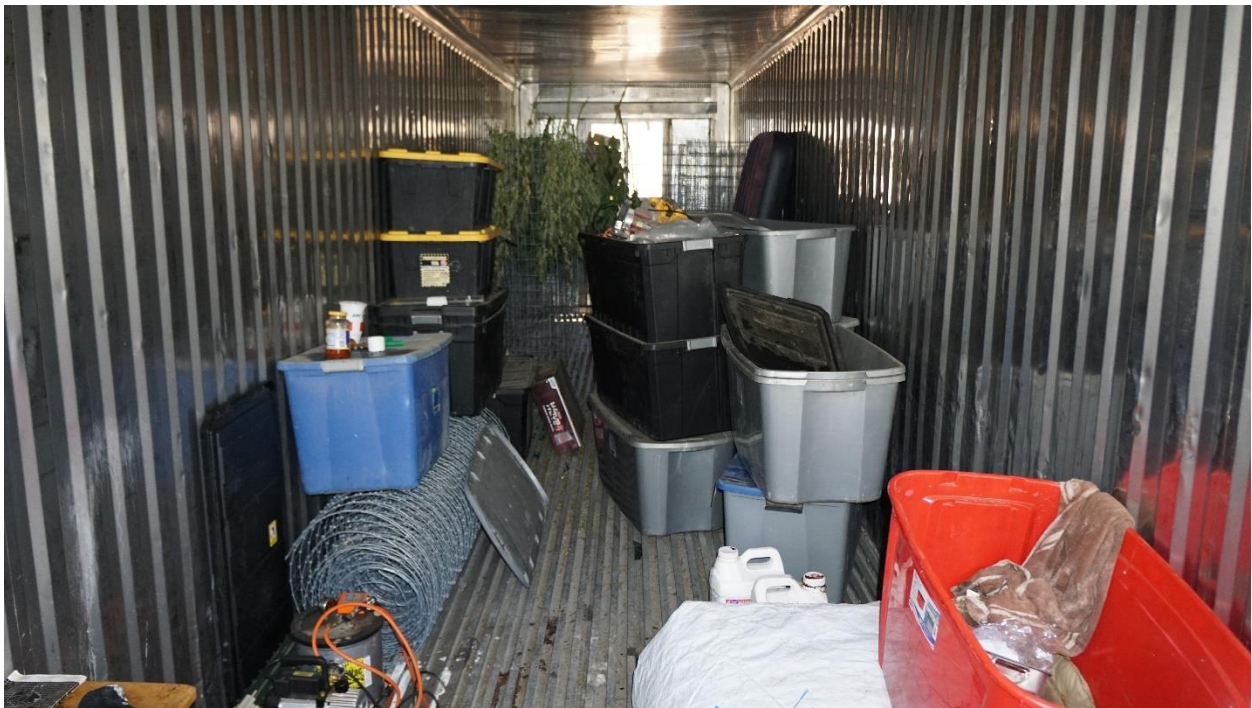


Warrant #3

At the second search warrant site on June 6, 2018 on Jolon Road, two people were located on the site along with an unregistered assault rifle and shotgun. Two hoop houses totaling 3,050 square feet of canopy contained 233 mature and immature plants. In addition to the hoop houses the grower had a small outdoor grow with 93 immature plants in a 105-square foot area and 156 seedlings within the trailer he was staying in. After the warrant was served additional investigative time was spent reviewing digital devices seized during the service of the warrant for evidence related to the cultivation and manufacturing being done on site. This case has been submitted for review for criminal and civil penalties.

Had this been a legal grow site, this grow would be classified as a Specialty Mixed-light Tier 1 site. The application fees to Cal Cannabis are \$655, with the annual license fee of \$5,900. Unpaid taxes to the County of Monterey at \$15 per square foot total \$45,750. Multiple County Code and Environmental Health violations were noted, and Notice of Violations issued.







32 personnel from the following agencies assisted in the service of the two search warrants on June 6, 2018:

- District Attorney's Office – 1 Captain and 10 Investigators
- California Fish and Wildlife – 1 Lieutenant, 4 Wardens, and 1 Environmental Scientist
- (1) Dump Trailer
- Monterey County Parks – 2 Park Rangers
- Monterey County Code Enforcement – 1 Inspector
- Monterey County Environmental Health – 2 Inspectors
- Monterey County Agricultural Commission – 1 Commissioner
- Monterey County Animal Control – 1 Officer
- California Department of Toxic Substance Control – 1 Investigator and 1 Environmental Scientist
- Monterey County Public Works – 6 employees
- (1) One Dump Truck
- (2) Loader
- (3) Pickup Truck with porta potty trailer

Additional cannabis cultivation sites were located on Carmel Valley Road near Piney Creek. One site was located by Fish & Wildlife wardens during an aerial patrol of Monterey County searching for trespass grows. The second site was identified by a District Attorney Investigator while working in the area on another case. Search warrants were served on each of these sites on June 21, 2018.

Warrant #4

The first warrant was for two large outdoor grows that had been located by California Fish & Wildlife wardens during an aerial patrol looking for outdoor cannabis cultivation sites. One subject in the grow fled upon contact and a 12-year-old juvenile was found in a tent on the grow sites. Ammunition for a rifle was found in another tent, but no rifle was located. Three adults were contacted in residences on the property. It was determined that one of the adults was involved with the outdoor grow. A second adult had his own personal grow near his home that exceeded the allowable amount without a permit. A total of 536 plants were destroyed within the grow sites. DAI's assisted with surveillance prior to the warrant, in drafting the search warrant, serving the search warrant, and follow up investigation after the warrant was served. Four cellular devices were seized from the grow area. DAI's are in the process of writing a search warrant to review the data on these devices to try and identify the individual who fled as well as any other individuals who were involved in the cultivation at this location. Felony charges are being filed against the individual associated with the large outdoor grows. Environmental violations, and misdemeanor charges are being filed against the other grower. Additional investigation is being conducted to try and identify the individual who fled the grow site and left the juvenile unattended.

Had the grow site been legal, the outdoor grow areas were estimated at approximately 30,000 and 25,000 sq. ft. and would be considered Medium Outdoor grows. The application fees would be \$1,555 and license fees of \$13,990, for each of the larger grow areas. Unpaid taxes for the outdoor grow sites total \$825,000. The areas in front of the residences were not included. Multiple County Code and Environmental Health violations were noted along with Environmental Crimes including water diversion from Piney Creek.





Pit for water storage and mixing of
chemical fertilizers.

Hazardous to animals and people.



Gas operated pump
pumping water from
Piney Creek



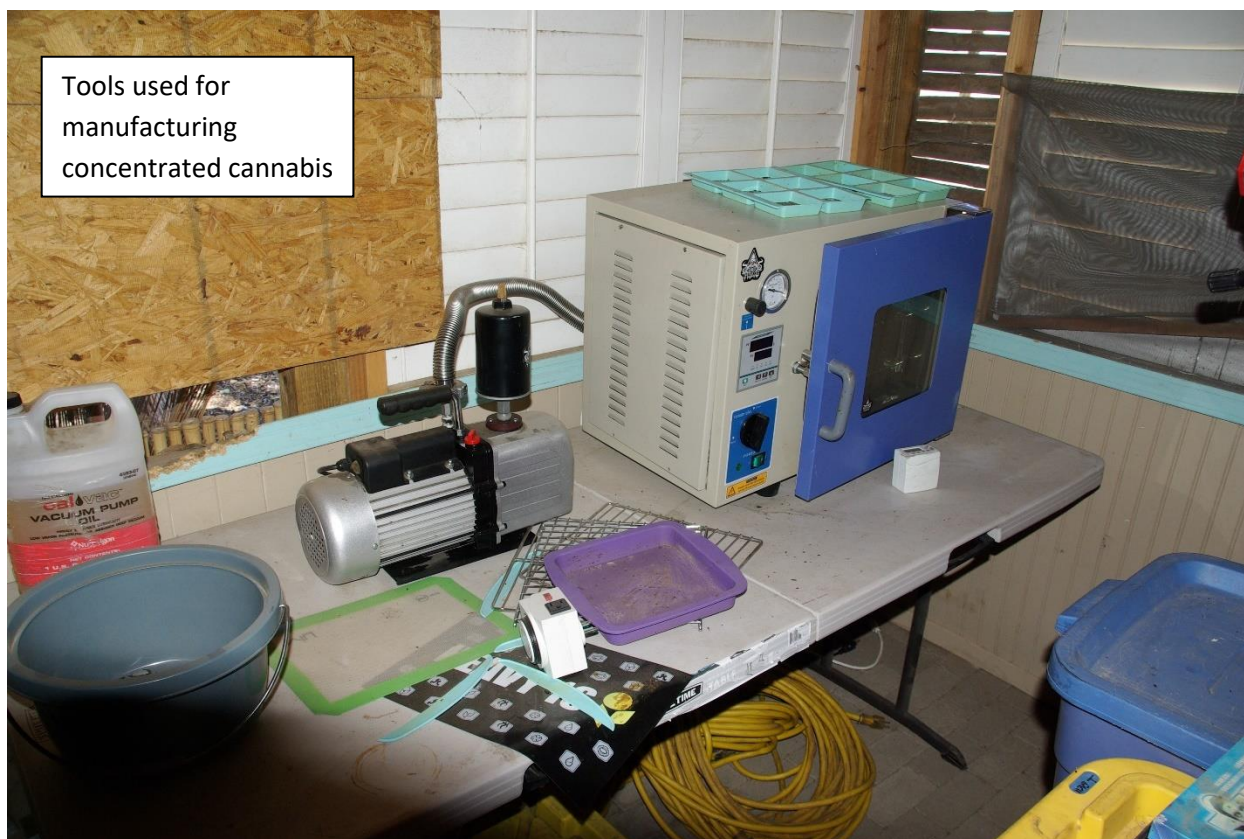
Warrant #5

The second location was located next to Carmel Valley Road and the cannabis cultivation was visible from the roadway. This location had been located by DAI's while on another investigation. They continued to monitor the site and noted an increase in the number of plants being grown on the site. No one was at the location when the warrant was served. A total of 323 plants were removed from an outdoor canopy area of approximately 368 square feet. This investigation is on-going to attempt to identify the grower.

This grow would be classified as a Specialty Outdoor grow. The application fees to Cal Cannabis are \$270, with the annual license fee of \$2,410. The County had not approved outdoor grows so there is no tax estimate for this site. Multiple County Code violations were noted and a Notice of Violation has been issued.

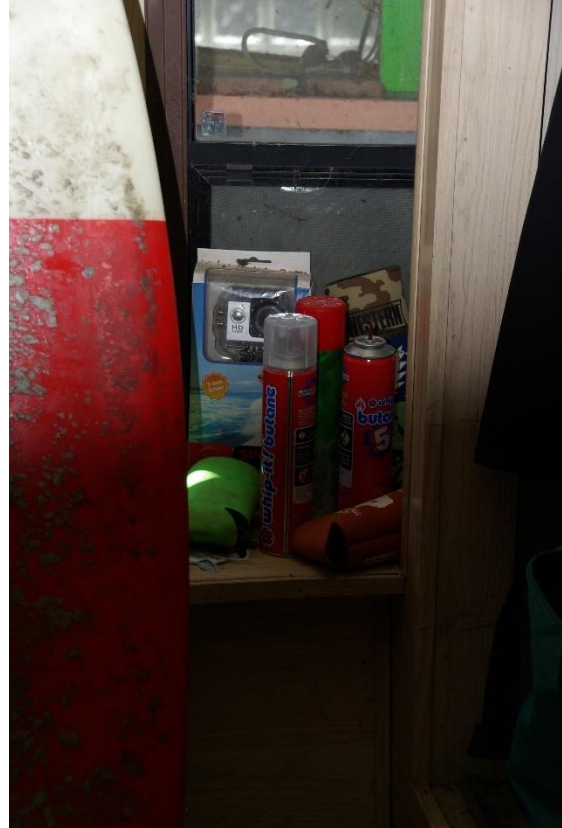


Tools used for
manufacturing
concentrated cannabis



Concentrated Cannabis





19 personnel from the following agencies assisted in the service of the search warrants on June 21, 2018:

- Monterey County District Attorney's Office – 5 Investigators
- California Fish and Wildlife – 1 Lt, 7 Wardens, and 1 Environmental Scientist (1) Dump Trailer
- Monterey County Park Rangers – 2 Park Rangers
- Monterey County Environmental Health – 2 Inspectors
- Monterey County Code Enforcement – 1 Inspector
- California State Water Resource Board – 1 Investigator

Warrant #6

The final search warrant that was done during the six-week period was at a commercial grow site on Alisal Road that had been reported to the DAO through a tip from the cannabis industry. This is the only tip that our office has received from the cannabis industry to date. The commercial site was located near several permitted sites.

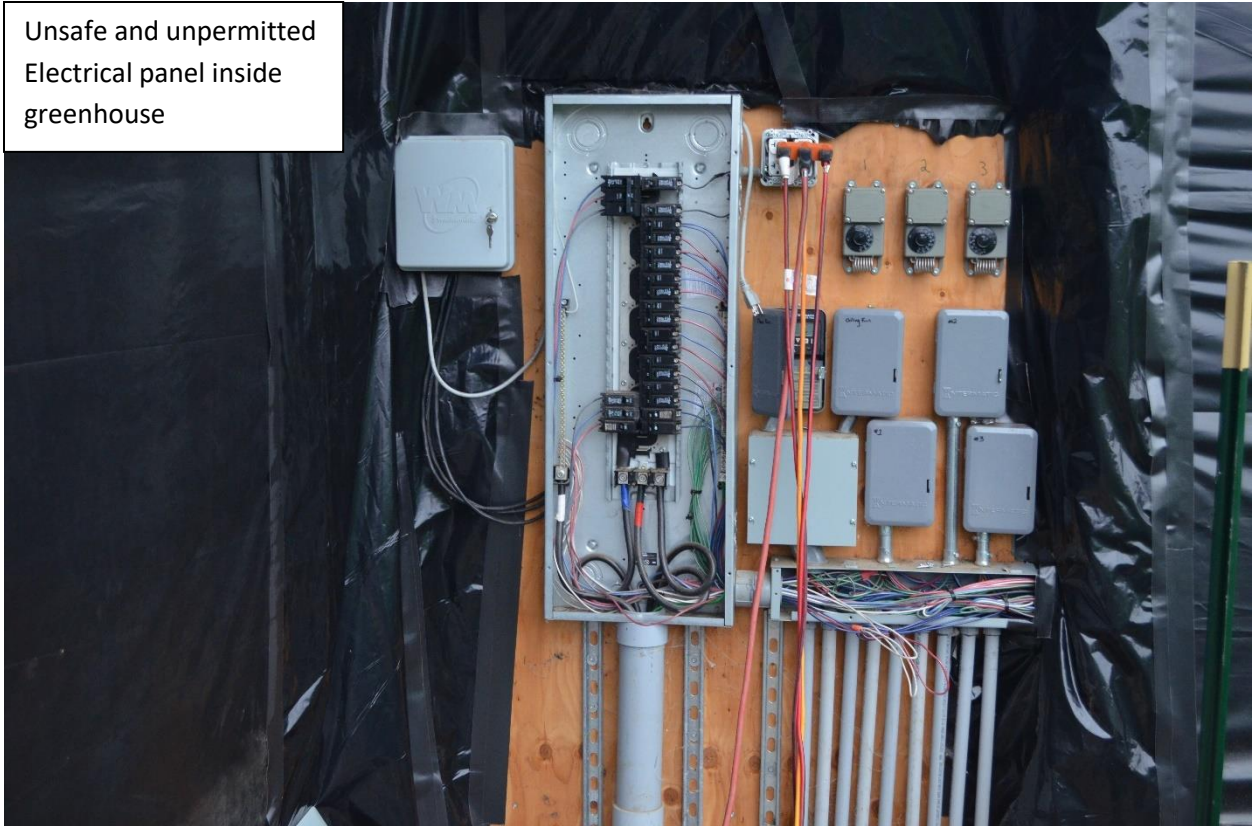
Investigation revealed the cannabis grow was operating at the site and no permits had been applied for or issued by the County or the State. California Fish & Wildlife and California Highway Patrol both conducted aerial surveillance of the location at the request of the District Attorney's Office. Ground surveillance was difficult due to the location and barriers set up at the site. DAI's wrote the warrant and took the lead during this warrant service.

On June 26, 2018, the warrant was served and a total of 10,244 plants and over 3,600 pounds of dried material was seized and destroyed. The greenhouse canopy was measured at 22,000 square feet. Twenty-one (21) people were located on the property at the time the warrant was served and indications are that multiple companies (licensed and unlicensed) were involved with either the grow or the processing of the dried material found at the site. This investigation is active and has not yet been submitted for review for prosecution. There is an ongoing human trafficking investigation because approximately 12 workers were found living in cargo containers.





Unsafe and unpermitted
Electrical panel inside
greenhouse



41 personnel from the following agencies assisted in the service of this warrant.

- District Attorney's Office – 1 Captain and 17 Investigators
- California Fish and Wildlife – 1 Lieutenant and 3 Wardens
 - (1) 2 dump trailers
- Monterey County Parks – 2 Park Rangers
- California Highway Patrol – 4 Officers
- Monterey County Sheriff's Department – 1 Detective
- Monterey County Code Enforcement – 1 Inspector
- Monterey County Environmental Health – 4 Inspectors
- Monterey County Agricultural Commission – 1 Commissioner
- Monterey County Public Works – 6 employees
 - (1) Three Dump Trucks
 - (2) Loader
 - (3) Pickup Truck with porta potty trailer

This grow would be classified by Cal Cannabis as a Medium Mixed-light Tier 1 site. The application fees to Cal Cannabis are \$2,885, and the permit fees if approved are \$25,970. Unpaid taxes for the County of Monterey at \$15 per square foot total \$330,000. Multiple County

Code and Environmental Health violations were noted and Notice of Violations issued to the property owner.

During this six-week period Investigators focused their efforts on illegal cannabis cultivation. They did not do any inspections of permitted cultivation, manufacturing, or distribution facilities (dispensaries or delivery services) to verify compliance, nor did they attempt to locate any unlicensed delivery services.

The total expenditure in employee hours for DAI's to participate in these 6 warrants totaled 398 hours over 4 days. This does not include the time spent locating, surveilling, writing warrants, follow up investigations (some of which are continuing), and writing reports related to these cases. This also does not include the time spent by prosecutors reviewing warrants and the submitted cases, and the subsequent prosecution of the involved individuals.

Warrant Process

In preparation for the search warrants, investigators need to locate and verify that the suspect site is actively growing cannabis. Once a site has been identified and a decision has been made to write a search warrant, investigators will continue to monitor the location while writing the search warrant. The time spent locating and verifying the cannabis cultivation sites varies depending on the accessibility of the site. Many of the illegal sites are located off the main roads, away from public view. Investigators use multiple tools to include four-wheel drive vehicles and aircraft to be able to view these cultivation sites from positions where they will not be spotted by the cultivator. On average, locating and identifying a site can take an investigator between 4-12 hours depending on the location in the county and the accessibility. Each subsequent site visit to verify the plants are still being cultivated, surveil the property to identify any cultivators, and assess any risk to the search warrant team prior to the search warrant service can take the same amount of time or longer depending on how active the site is at the time of the visit.

To write the search warrant, an experienced investigator needs to identify the parcel number, verify through RMA and Cal Cannabis that the owner of the property has not applied for a use permit and no applications are in process for a use or cultivation permit. The investigator will do background work on anyone identified at or associated with the property. The search warrant can take from 2-4 hours of an investigators time merely to write after the background information is compiled.

Once written the warrant is sent to a Prosecutor for review. It is the custom and practice in this county that a judge will not review a search warrant until a prosecutor has previously reviewed and approved the warrant. The prosecutor reviewing the warrant may send it back for additional information or corrections. On average a prosecutor spends about 1 hour reviewing search warrants that are sent to them for content, and probable cause. If the warrant is sent back for

additional information the time increases as each revision needs to be reviewed completely for accuracy.

After review by the prosecutor, the investigator contacts the courts to have a judge review the warrant. When a judge is available the investigator meets with the judge to have the warrant reviewed. If the judge approves the warrant, the investigator files the warrant with the clerk of the court, then makes copies of the warrant that will be needed at the time of service. This process takes the investigator about an hour once the judge concludes reviewing and signing off on the warrant.

Upon issuance of the warrant the investigator needs to coordinate with other law enforcement personnel and create an operations plan and threat assessment for the site. Using information gathered during the warrant preparation process, and additional surveillance by other investigators or the investigator writing the warrant, the investigator tries to determine the threat to the officers serving the warrant. Based on the assessment a decision can be made as to how many personnel are needed and whether SWAT would be needed for service. Some factors considered are the sized and accessibility of the site, number of people seen at the site, age of the people seen at the site, prior contacts with anyone identified at the site, and any known or suspected weapons at the site. The operations plan is reviewed and approved by a supervisor prior to the execution of the warrant. The preparation time needed to complete these tasks average between 4-6 hours.

Service of the search warrant includes briefing prior to the service and the actual service. The time it takes to execute the warrant, interview persons found at the site, and collect evidence needed for prosecution and removal of the plants has averaged 6-8 hours.

After the search warrant is served and interviews conducted the DAI's will continue their investigation to identify any other suspects, make the case stronger, and verify any alibies given by the suspects. If electronic devices are seized during the warrant service, an additional search warrant may be needed to search the devices and then the devices need to be downloaded and the content examined. The additional time needed to download and examine cellular phone data runs from 4-8 hours or longer depending on the amount of data stored on the phone. Assistance is needed from a District Attorney Digital Forensic Examiner to download the data from the cellular device and that examiner will spend 1-2 hours downloading and writing a report related to the actions in assisting the investigator.

During these six search warrants, a total of 26 digital devices were seized which included 2 computers and 18 cellular phones. The other devices consisted of external hard drives, thumb drives, and digital cameras.

Currently the District Attorney's Office is the primary source for all digital forensic requests in the county. There is one full time Digital Forensic Investigator and three District Attorney Investigators who assist on a part time basis in downloading and reviewing digital evidence. If a

computer is seized and needs to be examined, the amount of time needed to fully review the data on a computer or hard drive can run from 10-40 hours or more. Unlike cell phone data, when a computer examination is needed it must be done by the Digital Forensic Investigator or one of the District Attorney Investigators assigned to the computer forensics lab.

When the DAI's have obtained all the necessary information they will complete their reports for submission to the District Attorney's Office. Report writing is done throughout the investigative process. In these cases, the lead investigator spent between 4 and 8 hours writing reports related to the investigations. This includes the time needed to book all the collected evidence. It does not include the time for reviewing digital data extracted from phones and other digital devices seized as not all cases had digital media that needed to be reviewed.

Complaint Review and Prosecution - Civil or Criminal

The completed report, whether done by a DAI or local law enforcement agency, is submitted to the District Attorney's Office for review. A reviewing prosecutor may take 1-2 hours to review and write up the charging documents for the case if he/she decides to file charges. If the prosecutor reviewing the case needs additional information a follow up request will be sent to the originating agency. If charges are filed the case is assigned to a trial prosecutor. The amount of time a prosecutor spends on a charged case depends on many factors. The defendant may plead at arraignment or take the case to trial. Cases that go to trial take the most time to prepare and prosecute. With cannabis related cases we expect to see more cases going to trial due to the defendants using medical cannabis recommendations as a defense, and the public's perception that cannabis is legal and no longer a crime. The medical recommendation defense will be removed as a matter of law by January 1, 2019.

If the case is charged in a civil proceeding, negotiations begin with the defendant through his/her attorney to try to resolve the case without going to trial. Civil cases usually take longer than criminal cases to resolve and more prosecutor time is spent prosecuting a civil case.

In addition to the cannabis cultivation cases that the DAI's worked during the six weeks, they also identified two delivery services in the City of Salinas that did not have worker's compensation insurance. These are 2 of the 3 permitted cannabis delivery companies in the City of Salinas. Both are being charged with no workers' compensation insurance (misdemeanor), and one of them is also being charged for Employment Development Department violations (felony). These companies were licensed with the city and the state to conduct cannabis deliveries. During the investigation, it was noted that the delivery services did not appear to be following the regulations related to cannabis deliveries. Delivery drivers were coming and going with cannabis in paper bags and not placing them in locked containers in the cars before leaving (Title 16 CCR 5417(b) - Cannabis shall not be visible from outside vehicle, shall be locked in box, container, or cage secured on the inside of the vehicle).

The lead investigator working the workers' compensation investigations spent approximately 10 hours on each case in identifying, surveilling, researching, contacting, and then writing reports related to the investigation.

On average an investigator spends 15-30 hours on a cannabis investigation where a search warrant is needed, no digital media is recovered, and little or no follow up is needed after the search warrant service before the case is submitted for prosecution.

Costs Associated with Six Week Intensive Enforcement Effort:

We had three investigators working full time during the six weeks' period from May 19, to June 30, 2018. During this time, the investigators still had previously assigned cases, vacation, holiday (Memorial Day), training, and court days that took them away from cannabis enforcement or required additional overtime to compensate for their time away from their normal duties.

In addition to the search warrant hours listed above, the three investigators spent an additional 520 hours working directly on cannabis enforcement. This included assisting on eradication of a grow site in Prunedale on May 24, 2018, that was located during an inspection by Cal Trans of one of their properties where no search warrant was needed. The grandson of the tenant was growing over 300 plants and had cleared vegetation on a neighboring property also owned by Cal Trans.

We estimate District Attorney Investigators spent 918 hours working on Cannabis enforcement during the six-week period from May 21, 2018, through July 31, 2108. Of that we estimate 174 hours was outside the normal working hours of the investigator (M-F 0800-1700). The hours that are worked outside the normal working hours may be taken by the investigator as paid overtime, compensatory time off, or the investigator may choose to flex their work day with approval of a supervisor. If an investigator chooses to take the overtime as compensatory time off, then we lose the investigator for 1 ½ hours for each hour of overtime they worked on a date in the future.

Per the current MOU, adjustments to the work day can only be done if an investigator is given 10-day prior notice. In most cases search warrants are done with a few days' notice.

The following table illustrates the employee costs to our department in the event each of the investigators took their overtime as cash.

Hours Worked	Pay Rate	Total Compensation
744 Hours	Regular Rate (\$62.35 per hour)	\$46,388.40
174 Hours	Overtime (\$93.525 per hour)	\$16,237.35
	Total Salary Expense	\$62,661.75

In addition to salary expenses, there was a cost for the disposal of the cannabis at the landfill and testing of samples taken from one of the cultivation sites. The cost for disposal for 4 of the 6 search warrants was \$1,113.13. Fish and Wildlife absorbed the disposal fees for the warrants done on June 21, 2018 (Warrant #4 and #5). We have not received an invoice for the testing of samples taken from Warrant #6.

Ongoing Cannabis related enforcement (Criminal and Civil) in Monterey County:

Between July 1, 2018, and July 31, 2018, the District Attorney's Office has received 8 referrals from law enforcement agencies in Monterey County related to cannabis cultivation, transportation, or sales. We would expect this trend to continue, and most likely increase, as we have been informed that the MCSO is planning to assign two deputies to full time cannabis enforcement. California Fish & Wildlife has created a Marijuana Permitting Team, the District Attorney's Office has assigned one Investigator to full time cannabis enforcement, and local agencies have seen an increase in cannabis related crimes. At the current rate, we would expect to see approximately 108 referrals during the 2018-2019 Fiscal Year. This is a 186% increase over the 2017-2018 Fiscal Year and a 518% increase over the 2016-2017 Fiscal Year.

Complaints made by citizens to Cal Cannabis are referred to our office, local police and the MCSO for investigation. The County has received complaints from Cal Cannabis related to 28 businesses for unlawful advertisements and unlicensed cannabis activity (primarily delivery services).

Going forward the District Attorney's Office will be available to support the Monterey County Sheriff's Office and the California Department of Fish and Wildlife Marijuana Permitting Team, in their efforts to continue enforcement on unlicensed cannabis grows.

We currently have two multi-county civil cases for false advertising claims being investigated by the California Food, Drug, and Medical Device Task Force. The Task Force is made up of Consumer Protection Sections of the Alameda, Marin, Monterey, Napa, Orange, Santa Clara, Santa Cruz, Shasta, Solano, and Sonoma County District Attorneys' Offices. The Task Force is charged with the enforcement of California's false advertising and unfair competition laws (Business & Professions Code sections 17500, et seq. and 17200, et seq.), as they particularly apply to the areas of dietary and nutritional supplements, *unapproved drugs*, and medical devices, and food (emphasis added).

The Task Force is particularly focused on products that purport to have *beneficial health effects* or to diagnose, prevent, treat, mitigate, or cure diseases or abnormal conditions (emphasis added).

In addition, DAI's will be available to local agencies to provide advice, training, and assistance for any cannabis related crimes.

Our prosecutors will be reviewing search warrants and cases submitted by all law enforcement agencies in Monterey County for cannabis related crimes, and prosecuting these cases, civilly or criminally, once they are filed.

The DAI's assigned to cannabis will begin investigations of unlicensed delivery services that have been reported to us through Cal Cannabis. We will continue to work with RMA on unfair business practices where the licensee or applicant is failing to follow the county code or state laws related to their operations. These violations can be charged either criminally or handled civilly as an unfair business practice.

Our main objective is to create a fair and safe cannabis industry. Those individuals who operate in an unfair or unsafe manner will be dealt with the same as would any other business that is not operating within the scope and laws related to their business.

Financing

Total District Attorney personnel costs related to cannabis activities was \$170,934 for FY 2017-18. These costs involved investigation and filing, but does not include the prosecution costs. Our office did not start using the payroll code CANB for cannabis until November 2017, thus this total is below our actual expenditures related to cannabis enforcement during this Fiscal Year.

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