



AB 460 – State Water Resources Control Board: interim relief

Summary

AB 460 grants the State Water Resources Control Board (Board) authority to act immediately to halt illegal or wasteful uses of water that harm the environment or violate water right permits and licenses.

Background

California's legal framework and physical infrastructure for water was developed in the 20th Century, a period that was one of the wetter periods in the last millennia. In contrast, California and the Southwestern United States has been mired in a “megadrought” since the turn of the 21st Century.ⁱ This “megadrought” has led to increased water scarcity and revealed weaknesses in California's current water management regime.

The Board has been front and center in these challenges as it is the agency that administers California's water rights. The Board's mission is “to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations” and it has various tools and authorities to achieve it. These include authority to issue and regulate water right permits and licenses, monitor water use, and penalize water right violations.

One important enforcement tool possessed by the Board is the authority to issue a cease and desist order (CDO) to halt an unauthorized diversion of water or violation of a water right permit or license; however, execution of a CDO can be delayed because the party receiving it has 20 days to request a hearing and can game the system by waiting until the 20th day to inform the Board that it will not be requesting a hearing. As a result, the Board may have to wait 20 days before it can stop harmful activity.

In a recent egregious example, the Shasta River Water Association (SRWA) in Siskiyou County openly and illegally diverted water from the Shasta River in late-August 2022. The diversion violated a curtailment order issued by the Board to protect beneficial uses in the

Klamath River watershed in the face of extreme drought. The Board promptly issued a notice of violation and a draft CDO, but could not take further action to immediately stop the unauthorized diversion until 20 days had passed to give SRWA an opportunity to request a hearing on the alleged violation.

After eight days SRWA ceased its unauthorized diversion of its own accord. The [total penalty for eight days of illegally diverting water was a mere \\$4,000](#), a bargain compared to the value of the water illegally diverted by SRWA. The SRWA example clearly illustrates a gap in the State Water Board's enforcement authority and that penalties are insufficient to deter harmful and illegal water diversions.

Problem

Effective water rights administration depends, in part, on adequate and timely enforcement of the water rights system and sufficient penalties to deter harmful actions. The State Water Board lacks authority to act expeditiously to stop illegal use of water; likewise, the penalties that exist can be insufficient to deter such behavior since in some cases it is more economically rational to break the law and pay the penalty than to pay a high cost to obtain water legally.

What this bill does

AB 460 permits the State Water Board to act more quickly to prevent harm by

- 1) Authorizes it to inspect property or facilities of a person in order to determine if a violation of water rights is occurring and allows it to obtain an inspection warrant if permission is denied.
- 2) Authorizing it to issue an interim relief order to halt unauthorized or harmful use of water resources that violate the Constitution, the public trust doctrine, water quality objectives, water right permits and licenses, and fish and wildlife.
- 3) Requiring it to provide 10 days' notice before issuing an interim relief order unless the State Water Board

finds that immediate compliance is necessary to prevent injury or the interim relief order is issued in response to an alleged violation of a regulation or order by the State Water Board to curtail water diversions to protect instream flows or prior water rights.

- 4) Permitting it to require, as part of an interim relief order, that a party cease all harmful practices, take steps to mitigate harm, complete monitoring work, fund studies necessary to evaluate impact of the illegal diversion, and reimburse the State Water Board for its expenses related to the violation.
- 5) Requiring it to set a schedule for permanent relief as soon as reasonably possible for its consideration of permanent relief.
- 6) Clarifying that issuance of an interim relief order is subject to a categorical exemption under CEQA.
- 7) Permitting it to assess a penalty of \$10,000 per day and \$5,000 per acre-foot of water diverted in violation of an interim relief order.

- 8) Permitting to adjust water rights penalties annually based on the California Consumer Price Index.

Interim relief authority and increased penalties will allow the State Water Board to respond to water use violations in real-time and effectively deter harmful behavior.

Support

Planning and Conservation League (co-sponsor)
Trout Unlimited (co-sponsor)
California Trout (co-sponsor)

Contact

Pablo Garza
Chief Consultant
916-319-2096
pablo.garza@asm.ca.gov

ⁱ A. Park Williams, Benjamin I. Cook, and Jason E. Smerdon. "Rapid Intensification of the emerging southwestern North American megadrought in 2020-21." *Science* 368 (6488), 314-318.