

AMENDED IN ASSEMBLY MAY 18, 2023

AMENDED IN ASSEMBLY APRIL 26, 2023

AMENDED IN ASSEMBLY MARCH 30, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 460

**Introduced by Assembly Member Bauer-Kahan
(Principal coauthor: Assembly Member Friedman)**

February 6, 2023

An act to amend Sections 1055, 1055.2, 1126, and 1846 of, to add Sections 1051.2 and 1055.5 to, and to add Chapter 3.6 (commencing with Section 1115) to Part 1 of Division 2 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 460, as amended, Bauer-Kahan. State Water Resources Control Board: water rights and usage: interim relief: procedures.

(1) Existing law authorizes the State Water Resources Control Board to investigate all streams, stream systems, lakes, or other bodies of water, take testimony relating to the rights to water or the use of water, and ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the state. Existing law requires the board to take appropriate actions to prevent waste or the unreasonable use of water.

This bill would authorize the board, in conducting specified investigations or proceedings to inspect the property or facilities of a person or entity, as specified. The bill would authorize the board, if consent is denied for an inspection, to obtain an inspection warrant, as specified, or in the event of an emergency affecting public health and

safety, to conduct an inspection without consent or a warrant. Because the willful refusal of an inspection lawfully authorized by an inspection warrant is a misdemeanor, this bill would impose a state-mandated local program by expanding the application of a crime.

(2) Existing law authorizes the executive director of the board to issue a complaint to any person or entity on which administrative civil liability may be imposed pursuant to specified law, and requires the complaint to be served by personal notice or certified mail.

This bill would expand methods of notice for those purposes to include notice in accordance with the manner of service of a summons under specified provisions of the Code of Civil Procedure.

(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.

This bill would require the State Water Resources Control Board to adjust for inflation, by January 1 of each year, beginning in 2025, the amounts of civil and administrative liabilities or penalties imposed by the board in water right actions, as specified.

(4) The California Constitution requires the reasonable and beneficial use of water. ~~Under the public trust doctrine, the State Water Resources Control Board, among other state agencies, is required to take the public trust into account in the planning and allocation of water resources and to protect the public trust whenever feasible.~~ The board and the California regional water quality control boards are required to set forth water quality objectives in state and regional water quality control plans. Existing law establishes the Water Rights Fund, which consists of various fees and penalties. The moneys in the Water Rights Fund are available upon appropriation by the Legislature for the administration of the board's water rights program.

~~Existing law requires that the owner of any dam allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around, or through the dam, to keep in good condition any fish that may be planted or exist below the dam, as specified.~~

This bill would authorize the board to issue, on its own motion or upon the petition of an interested party, an interim relief order to a diverter or user of water in adjudicative proceedings to apply or enforce specified provisions of law related to water rights and quality. The bill would provide that a person or entity that violates any interim relief order issued by the board would be liable to the board for a civil penalty

in an amount not to exceed the sum of \$10,000 for each day in which a violation occurs and \$2,500 for each acre-foot of water diverted in violation of the interim relief order. The bill would require these funds to be deposited in the Water Rights Fund. The bill would make these provisions operative on January 1, 2025.

(5) Existing law authorizes any party aggrieved by any decision or order of the State Water Resources Control Board, not later than 30 days from the date of final action by the board, to file a petition for a writ of mandate for judicial review of the decision or order. Existing law requires a court to exercise its independent judgment on the evidence in any case involving the judicial review of certain cease and desist orders issued by the board and in any other case in which the court is authorized by law to exercise its independent judgment on the evidence.

This bill would require an aggrieved party to file a petition for reconsideration with the board to exhaust the party's administrative remedies before filing an action for judicial review of the board's decision or order under specified circumstances. The bill would require the scope of review of a board decision or order regarding interim relief to be the same as for a court of appeal review of a superior court decision granting or denying a preliminary injunction. The bill would generally prohibit, except as provided, a legal or equitable process from issuing in any proceeding in a court against the board or an officer of the board to review, prevent, or enjoin certain adjudicative proceedings or a decision or order of the board before a final decision or order of the board is issued.

(6) Existing law authorizes a person or entity in violation of a term or condition of a permit, license, certificate, or registration issued by, or an order or regulation adopted by, the board to be held civilly liable for an amount not to exceed \$500 for each day that the violation occurs.

The bill would increase the amount of civil liability for the above-described violations to \$1,500 for each day in which the violation occurs, \$10,000 for each day in which the violation occurs, and \$2,500 for each acre-foot of water diverted or used that amounted to the violation.

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 1051.2 is added to the Water Code, to
2 read:

3 1051.2. (a) In conducting an investigation or proceeding
4 specified in Section 275 or 1051, or in Article 7 (commencing with
5 Section 13550) of Chapter 7 of Division 7, the board may inspect
6 the property or facilities of a person or entity to ascertain whether
7 the purposes of Section 100 and this division are being met or to
8 ascertain compliance with any permit, license, certification,
9 registration, decision, order, or regulation issued under Section
10 275, this division, or Article 7 (commencing with Section 13550)
11 of Chapter 7 of Division 7.

12 (b) If consent to inspect is denied or otherwise withheld, the
13 board is authorized to obtain an inspection warrant pursuant to the
14 procedure set forth in Title 13 (commencing with Section 1822.50)
15 of Part 3 of the Code of Civil Procedure for purposes of an
16 inspection under this section. However, in the event of an
17 emergency affecting the public health or safety, an inspection may
18 be performed without consent or the issuance of a warrant.

19 SEC. 2. Section 1055 of the Water Code is amended to read:

20 1055. (a) The executive director of the board may issue a
21 complaint to any person or entity on which administrative civil
22 liability may be imposed pursuant to Section 1052, Section 1119,
23 Article 4 (commencing with Section 1845) of Chapter 12 of Part
24 2, or Section 5107. The complaint shall allege the act or failure to
25 act that constitutes a trespass or violation, the provision of law
26 authorizing civil liability to be imposed, and the proposed civil
27 liability.

28 (b) The complaint shall be served by personal notice or certified
29 mail, or in accordance with the manner of service of a summons
30 under Article 3 (commencing with Section 415.10) of, and Article
31 4 (commencing with Section 416.10) of, Chapter 4 of Title 5 of
32 Part 2 of the Code of Civil Procedure. The complaint shall inform
33 the party served that the party may request a hearing not later than
34 20 days from the date the party was served and that the board may
35 adopt an order setting administrative civil liability based on the

1 allegations set forth in the complaint without a hearing if the party
2 does not sign a written request for a hearing that is delivered to,
3 or received by mail by, the board within 20 days after the date the
4 party was served. The hearing shall be before the board or a
5 member of the board, in accordance with Section 183.

6 (c) The board, after any necessary hearing, may adopt an order
7 setting administrative civil liability, or determining that a liability
8 shall not be imposed.

9 (d) Orders setting administrative civil liability shall become
10 effective and final upon issuance thereof and payment shall be
11 made.

12 SEC. 3. Section 1055.2 of the Water Code is amended to read:

13 1055.2. A person or entity shall not be subject to both civil
14 liability imposed under Section 1055 and civil liability imposed
15 by the superior court under Section 1052, Section 1119, or Article
16 4 (commencing with Section 1845) of Chapter 12 of Part 2 for the
17 same act or failure to act.

18 SEC. 4. Section 1055.5 is added to the Water Code, to read:

19 1055.5. (a) (1) The board shall adjust on an annual basis, by
20 January 1 of each year beginning in 2025, all civil and
21 administrative liabilities or penalties imposed by the board in an
22 action brought at the request of the board pursuant to this division,
23 to adjust the maximum amounts specified in this division for
24 inflation, as established by the amount by which the California
25 Consumer Price Index for the month of June of the year prior to
26 the adjustment exceeds the California Consumer Price Index for
27 June of the calendar year in which legislation was last enacted
28 establishing or amending the maximum amount of the liability or
29 penalty.

30 (2) The amount of any liability or penalty determined pursuant
31 to this subdivision shall be rounded as follows:

32 (A) To the nearest multiple of ten dollars (\$10) in the case of a
33 liability or penalty that is less than or equal to one hundred dollars
34 (\$100).

35 (B) To the nearest multiple of one hundred dollars (\$100) in the
36 case of a liability or penalty that is greater than one hundred dollars
37 (\$100), but less than or equal to one thousand dollars (\$1,000).

38 (C) To the nearest multiple of one thousand dollars (\$1,000) in
39 the case of a liability or penalty that is greater than one thousand

1 dollars (\$1,000), but less than or equal to ten thousand dollars
 2 (\$10,000).

3 (D) To the nearest multiple of five thousand dollars (\$5,000) in
 4 the case of a liability or penalty that is greater than ten thousand
 5 dollars (\$10,000).

6 (3) Inflation adjustments made pursuant to this subdivision are
 7 exempt from the requirements of Chapter 3.5 (commencing with
 8 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
 9 Code. The updated civil and administrative liability or penalties
 10 pursuant to the inflation adjustment shall be filed with the Secretary
 11 of State and published in the California Code of Regulations.

12 (b) This section does not apply to any liability imposed under
 13 Section 1538.

14 (c) The board shall report to the Legislature, in accordance with
 15 Section 9795 of the Government Code, with regard to the
 16 implementation of this section.

17 SEC. 5. Chapter 3.6 (commencing with Section 1115) is added
 18 to Part 1 of Division 2 of the Water Code, to read:

19
 20 CHAPTER 3.6. INTERIM RELIEF
 21

22 1115. (a) The board may issue an interim relief order to a
 23 diverter or user of water in adjudicative proceedings to apply or
 24 enforce any of the following with respect to water held under any
 25 basis of right:

26 (1) Section 2 of Article X of the California Constitution.

27 ~~(2) The public trust doctrine.~~

28 ~~(3)~~

29 (2) Water quality objectives or principles and guidelines adopted
 30 under subdivision (b) of Section 13142, Section 13149, Section
 31 13170, or *Section* 13241.

32 ~~(4)~~

33 (3) The requirements set forth in permits, licenses, certificates,
 34 and registrations issued under Part 2 (commencing with Section
 35 1200), including actions that invoke the board's reserved
 36 jurisdiction or continuing authority.

37 ~~(5)~~

38 (4) Any provision in Division 1 (commencing with Section
 39 100), this division, or Article 7 (commencing with Section 13550)
 40 of Chapter 7 of Division 7.

1 ~~(6) Section 5937 of the Fish and Game Code.~~

2 (b) The board may commence an interim relief proceeding on
3 its own motion or upon the petition of an interested party. The
4 board shall not accept a petition that does not include all of the
5 following information:

6 (1) The name and mailing address of the petitioner.

7 (2) A description of the specific diversion or use of water that
8 the petitioner is contesting.

9 (3) A statement of the petitioner's interest in the contested
10 diversion or use of water.

11 (4) Identification of the adjudicative proceedings in which
12 interim relief is requested.

13 (5) A description of the harm or injury complained of.

14 (6) An explanation of the nexus between the diversion or use
15 and the alleged harm or injury.

16 (7) The relief the petitioner is requesting.

17 (8) A statement of reasons explaining why the relief is justified.

18 (9) Any additional information that the board may deem
19 appropriate.

20 (c) The board may dismiss a petition that does not raise
21 substantial issues that are appropriate for review.

22 (d) Except as provided in subdivision (e), the board shall provide
23 notice at least 10 days before the hearing date.

24 (e) The board may issue an interim order prior to the opportunity
25 for a hearing so long as the order includes a finding by the board
26 that immediate compliance is necessary to prevent imminent or
27 irreparable injury to other legal users of water, or to instream
28 beneficial uses.

29 (f) If the board issues an interim relief order prior to the
30 opportunity for a hearing, it shall, at the request of the party to
31 whom the order is issued, hold a hearing within 15 days of the date
32 the board receives the request for a hearing, unless the party to
33 whom the interim relief order is issued agrees to an extension of
34 that period.

35 (g) On or before December 31, 2024, the board shall adopt
36 regulations providing for a formal process for which any hearing
37 pursuant to this section is to be governed. The regulations may
38 include any of the following:

1 (1) Whether to provide that the evidence to be considered shall
2 be based on declarations under penalty of perjury, the testimony
3 of witnesses at the hearing, or both.

4 (2) Whether to consider oral or written legal argument that is
5 provided in a timely manner by the parties.

6 (3) A schedule by which the board will accept filed declarations,
7 exhibits, and written arguments prior to a hearing pursuant to this
8 section.

9 (4) Any other evidentiary or procedural rules the board deems
10 necessary and appropriate to carry out this section.

11 (h) If the board issues an interim relief order pursuant to
12 subdivision (e), the interim relief order shall remain in effect for
13 a period not to exceed 180 days unless the party to whom the
14 interim relief order is issued agrees to an extension of that period.
15 This subdivision is not a limitation on the authority of the board
16 to issue any additional interim relief in response to changed
17 circumstances.

18 (i) In determining whether to provide interim relief, and the
19 nature and extent of the relief, the board shall consider all relevant
20 circumstances, including available information concerning the
21 effects on other legal users of water, fish, wildlife, and other
22 instream beneficial uses, the extent of harm, the necessity for relief,
23 and any appropriate measures to minimize any adverse effects of
24 providing interim relief. Sufficient grounds shall exist for interim
25 relief upon the same showing as would be required for a superior
26 court to grant a preliminary injunction.

27 (j) Any party aggrieved by an interim relief order may, not later
28 than 15 days after the hearing provided for in subdivision (f), file
29 a petition for a writ of mandate for review of the decision or order.
30 Reconsideration before the board shall not be an administrative
31 remedy that is required to be exhausted before filing a petition for
32 writ of mandate.

33 (k) Section 1094.5 of the Code of Civil Procedure shall govern
34 judicial proceedings pursuant to subdivision (j).

35 1115.5. (a) As part of the interim relief order, the board may
36 require a water diverter or user to do any of the following:

37 (1) Cease all harmful practices.

38 (2) Employ specific procedures and operations to prevent or
39 mitigate the harm.

1 (3) Complete technical and monitoring work and prepare and
2 submit reports on that work, including draft environmental
3 documentation.

4 (4) Participate in, and provide funding for, studies that the board
5 determines are reasonably necessary to evaluate the impact of the
6 diversion or use that is the subject of the adjudicative proceeding.

7 (5) Reimburse the board's expenses for the preparation of any
8 necessary environmental documentation.

9 ~~(6) Take other required action.~~

10 (b) The board shall set a schedule for compliance with any
11 interim relief order.

12 1116. If the board orders interim relief, the board shall set a
13 schedule, as soon as reasonably possible, for the board's
14 consideration of permanent relief. The schedule shall include
15 actions that the water diverter or user is required to undertake to
16 ensure timely consideration of the permanent relief. The actions
17 required of the water diverter or user may include, but are not
18 limited to, the completion of technical and monitoring work, the
19 preparation and submittal of reports on that work, including draft
20 environmental documentation, and the reimbursement of the
21 board's expenses. Any permanent relief shall be granted after
22 notice and an opportunity for a hearing.

23 1116.5. Notwithstanding Section 15300.2 of Title 14 of the
24 California Code of Regulations, actions of the board under this
25 chapter shall be deemed to be within the meaning of Section 15308
26 of Title 14 of the California Code of Regulations.

27 1117. The board may review and revise any part of an interim
28 relief order at any time after notice to all interested parties and an
29 opportunity for a hearing. If a hearing is requested, the board shall
30 establish the hearing date within 15 calendar days and shall not
31 review or revise the interim relief order until the hearing occurs.

32 1117.5. The issuance or denial of an interim relief order by the
33 board does not alter the burdens of proof or the burdens of coming
34 forward with respect to the board's final decision on the merits in
35 the adjudicative proceeding in which interim relief is requested.

36 1118. This chapter is not a limitation on the jurisdiction of any
37 court or agency over any matter within that court or agency's
38 jurisdiction.

39 1118.5. If a water diverter or user does not comply with an
40 interim relief order, the Attorney General, upon the request of the

1 board, shall petition the superior court for prohibitory or mandatory
2 injunctive relief, as necessary, through the issuance of a temporary
3 restraining order, preliminary injunction, or permanent injunction.

4 1119. (a) (1) Any person or entity that violates an interim
5 relief order issued by the board is liable for a civil penalty not to
6 exceed the sum of the following:

7 (A) Ten thousand dollars (\$10,000) for each day in which a
8 violation occurs.

9 (B) Two thousand five hundred dollars (\$2,500) for each
10 acre-foot of water diverted in violation of the interim relief order.

11 (2) Civil liability may be imposed by the superior court. The
12 Attorney General, upon request of the board, shall petition the
13 superior court to impose the liability. The Superior Court shall
14 impose the civil penalty if it determines by a preponderance of the
15 evidence that the water diverter or user subject to the interim relief
16 order has violated the order.

17 (3) Civil liability may be imposed administratively by the board
18 pursuant to Section 1055.

19 (b) In determining the appropriate amount, the court or board,
20 as the case may be, shall consider all the relevant circumstances,
21 including the extent of harm caused by the violation, the nature
22 and persistence of the violation, the length of time over which the
23 violation occurs, and any corrective action undertaken by the
24 violator.

25 (c) All funds recovered pursuant to this section shall be
26 deposited in the Water Rights Fund.

27 (d) Remedies under this section are in addition to, and do not
28 supersede or limit, any and all other remedies, civil or criminal.

29 1119.5. This chapter does not limit any authority held by the
30 board under this code or any other provision of law.

31 1119.6. This chapter shall become operative on January 1,
32 2025.

33 SEC. 6. Section 1126 of the Water Code is amended to read:

34 1126. (a) It is the intent of the Legislature that all issues
35 relating to state water law decided by the board be reviewed in
36 state courts, if a party seeks judicial review. It is the intent of the
37 Legislature that judicial review of a final decision or order of the
38 board shall be in accordance with this section. It is further the
39 intent of the Legislature that the courts assert jurisdiction and
40 exercise discretion to fashion appropriate remedies pursuant to

1 Section 389 of the Code of Civil Procedure to facilitate the
2 resolution of state water rights issues in state courts.

3 (b) Any party aggrieved by any decision or order may, not later
4 than 30 days from the date of final action by the board, file a
5 petition for a writ of mandate for review of the decision or order.
6 An aggrieved party shall file a petition for reconsideration with
7 the board to exhaust that party's administrative remedies before
8 filing an action under this section, or under Section 21167 of the
9 Public Resources Code if the board is a respondent in connection
10 with its issuance of an order or decision subject to this chapter,
11 only if the initial decision or order is issued under authority
12 delegated to an officer or employee of the board. The time for
13 filing the petition for writ of mandate and the time for filing an
14 action or proceeding in which the board is a respondent under
15 Section 21167 of the Public Resources Code shall be extended for
16 any person who seeks reconsideration by the board pursuant to
17 this article.

18 (c) Section 1094.5 of the Code of Civil Procedure shall govern
19 judicial proceedings under this section. The scope of review of a
20 decision or order issued under Chapter 3.6 (commencing with
21 Section 1115) shall be the same as for a court of appeal review of
22 a superior court decision granting or denying a preliminary
23 injunction.

24 (d) If no aggrieved party petitions for a writ of mandate within
25 the time provided by this section, the decision or order of the board
26 is not subject to review by any court.

27 (e) In any court case reviewing a decision or order by the board
28 relating to a permit or license to appropriate water held by the state
29 through the department or any other state agency, or to a permit
30 or license to appropriate water held by the United States through
31 the Bureau of Reclamation or any other federal agency, the election
32 by the United States, or any agency thereof, not to be a party shall
33 not, in and of itself, be the basis for dismissal pursuant to Section
34 389 of the Code of Civil Procedure or any other provision of law.

35 (f) Except as provided in this section, a legal or equitable process
36 shall not issue in a proceeding in a court against the board or an
37 officer of the board to review, prevent, or enjoin either of the
38 following:

39 (1) An adjudicative proceeding under this division.

1 (2) A decision or order of the board before a final decision or
2 order is issued.

3 SEC. 7. Section 1846 of the Water Code is amended to read:

4 1846. (a) (1) A person or entity may be liable for a violation
5 of paragraph (2) in an amount not to exceed the sum of the
6 following:

7 (A) One thousand five hundred dollars (\$1,500) for each day
8 in which the violation occurs.

9 (B) Ten thousand dollars (\$10,000) for each day in which the
10 violation occurs.

11 (C) Two thousand five hundred dollars (\$2,500) for each
12 acre-foot of water diverted or used that amounted to the violation.

13 (2) (A) A term or condition of a permit, license, certificate, or
14 registration issued under this division.

15 (B) A regulation or order adopted by the board.

16 (b) Civil liability may be imposed pursuant to subparagraph (B)
17 or (C) of paragraph (1) of subdivision (a) by the superior court.
18 The Attorney General, upon the request of the board, shall petition
19 the superior court to impose, assess, and recover those sums.

20 (c) Civil liability may be imposed pursuant to subparagraph (A)
21 of paragraph (1) of subdivision (a) administratively by the board
22 pursuant to Section 1055.

23 SEC. 8. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.