

AMENDED IN ASSEMBLY MAY 18, 2023

AMENDED IN ASSEMBLY APRIL 20, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 1337

Introduced by Assembly Member Wicks

February 16, 2023

An act to amend Sections 1052 and 1831 of, and to add Chapter 2.5 (commencing Section 1065) to Part 1 of Division 2 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1337, as amended, Wicks. State Water Resources Control Board: water diversion curtailment.

(1) 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 expand the instances when the diversion or use of water is considered a trespass.

(2) Existing law establishes the State Water Resources Control Board in the California Environmental Protection Agency and vests the board with various powers and duties, including, among other things, to ascertain whether or not water heretofore filed upon or attempted to be appropriated is appropriated under the laws of this state. Existing law authorizes the board to adopt emergency regulations if, among other things, the regulations are adopted to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's

priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.

This bill would authorize the board to issue a curtailment order for any diversion, regardless of basis of right, when water is not available under the diverter’s priority of right. The bill would ~~authorize~~ *require* the board to adopt regulations to implement this provision.

(3) Existing law authorizes the board to issue a cease and desist order against a person who is violating, or threatening to violate, certain requirements relating to water use.

This bill would additionally authorize the board to issue a cease and desist order when a water right holder fails to curtail diversions when water is unavailable under the water right holder’s priority of right.

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. (a) It is the intent of the Legislature that the State
2 Water Resources Control Board shall be able to exercise its full
3 authority under Section 2 of Article X of the California
4 Constitution, the public trust doctrine, and Division 1 (commencing
5 with Section 100) and Division 2 (commencing with Section 1000)
6 of the Water Code to ensure that the use or diversion of water
7 under any claim of right serves the public interest.

8 (b) It is the intent of the Legislature that this bill clarify that the
9 State Water Resources Control Board has the necessary authority
10 to curtail pre-1914 water rights and address the gap in the state
11 board’s authority revealed by the court in the series of cases known
12 as the California Water Curtailment Cases.

13 SEC. 2. Section 1052 of the Water Code is amended to read:

14 1052. (a) The diversion or use of water ~~subject to this division~~
15 other than as authorized is a trespass.

16 (b) (1) An action for the issuance of injunctive relief as may
17 be warranted by way of temporary restraining order, preliminary
18 injunction, or permanent injunction, may be brought by the
19 Attorney General on behalf of the board, or in the Attorney
20 General’s independent capacity in the name of the people of the
21 State of California, where the diversion or use of water is
22 threatened, is occurring, or has occurred.

1 (2) (A) A civil action for a violation under this section resulting
2 from unlicensed cannabis cultivation may also be brought by a
3 city attorney or county counsel, upon approval of the board, in the
4 name of the people of the State of California.

5 (B) A city attorney or county counsel shall inform and
6 coordinate with the board as to the investigation of potential
7 violations of this section related to unlicensed cannabis cultivation.
8 Unless the board withholds its approval within 21 days after the
9 local jurisdiction provides notice of its intent to file, the local
10 jurisdiction may deem the board's silence as approval.

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

13 (1) If the unauthorized diversion or use occurs in a critically
14 dry year immediately preceded by two or more consecutive below
15 normal, dry, or critically dry years, or during a period for which
16 the Governor has issued a proclamation of a state of emergency
17 under the California Emergency Services Act (Chapter 7
18 commencing with Section 8550) of Division 1 of Title 2 of the
19 Government Code) based on drought conditions, the sum of the
20 following:

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

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

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

29 (3) Notwithstanding paragraphs (1) and (2), up to three thousand
30 five hundred dollars (\$3,500) for each day in which the
31 unauthorized diversion or use for unlicensed cannabis cultivation
32 occurs.

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

35 (1) The superior court may impose civil liability in an action
36 brought by the Attorney General, upon request of the board, to
37 impose, assess, and recover any sums pursuant to subdivision (c).
38 In determining the appropriate amount, the court shall take into
39 consideration all relevant circumstances, including, but not limited
40 to, the extent of harm caused by the violation, the nature and

1 persistence of the violation, the length of time over which the
2 violation occurs, and the corrective action, if any, taken by the
3 violator.

4 (2) The superior court may impose civil liability in an action
5 for a violation under this section resulting from unlicensed cannabis
6 cultivation brought by a city attorney or county counsel to impose,
7 assess, and recover any sums pursuant to subdivision (c). In
8 determining the appropriate amount, the court shall take into
9 consideration all relevant circumstances, including, but not limited
10 to, the extent of harm caused by the violation, whether the violation
11 was intentional or committed knowingly, the nature and persistence
12 of the violation, the length of time over which the violation has
13 occurred, and the corrective action, if any, taken by the violator.
14 The court shall make its findings on the record.

15 (3) The board may impose civil liability in accordance with
16 Section 1055.

17 (e) (1) Upon appropriation by the Legislature, funds recovered
18 in an action pursuant to this section shall be used to proportionally
19 reimburse the Attorney General, city attorney, county counsel, and
20 the board for costs of bringing the action, including reasonable
21 attorney’s fees, and of investigating the violation and supporting
22 the prosecution of the action.

23 (2) Except for reimbursements to the Attorney General, city
24 attorney, or county counsel, as specified in paragraph (1), all funds
25 recovered pursuant to this section shall be deposited in the Water
26 Rights Fund established pursuant to Section 1550.

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

29 SEC. 3. Chapter 2.5 (commencing with Section 1065) is added
30 to Part 1 of Division 2 of the Water Code, to read:

31

32 CHAPTER 2.5. WATER SHORTAGE ENFORCEMENT

33

34 1065. (a) The board may issue a curtailment order for any
35 diversion, regardless of basis of right, when water is not available
36 under the diverter’s priority of right.

37 (b) Failure to comply with a curtailment order is a ~~trespass as~~
38 ~~provided in Section 1052.~~ *trespass*.

39 (c) The board ~~may~~ *shall* adopt regulations to implement this
40 section.

1 SEC. 4. Section 1831 of the Water Code is amended to read:

2 1831. (a) When the board determines that any person is
3 violating, or threatening to violate, any requirement described in
4 subdivision (d), the board may issue an order to that person to
5 cease and desist from that violation.

6 (b) The cease and desist order shall require that person to comply
7 forthwith or in accordance with a time schedule set by the board.

8 (c) The board may issue a cease and desist order only after
9 notice and an opportunity for hearing pursuant to Section 1834.

10 (d) The board may issue a cease and desist order in response to
11 a violation or threatened violation of any of the following:

12 (1) The prohibition set forth in Section 1052 against the
13 unauthorized diversion or use of water subject to this division.

14 (2) When a water right holder fails to curtail diversions when
15 water is unavailable under the water right holder's priority of right.

16 (3) Any term or condition of a permit, license, certification, or
17 registration issued under this division.

18 (4) Any decision or order of the board issued under this part,
19 Section 275, Chapter 11 (commencing with Section 10735) of Part
20 2.74 of Division 6, or Article 7 (commencing with Section 13550)
21 of Chapter 7 of Division 7, in which decision or order the person
22 to whom the cease and desist order will be issued, or a predecessor
23 in interest to that person, was named as a party directly affected
24 by the decision or order.

25 (5) A regulation adopted under Section 1058.5.

26 (6) Any extraction restriction, limitation, order, or regulation
27 adopted or issued under Chapter 11 (commencing with Section
28 10735) of Part 2.74 of Division 6.

29 (7) Any diversion or use of water for cannabis cultivation if any
30 of paragraphs (1) to (6), inclusive, or any of the following applies:

31 (A) A license is required, but has not been obtained, under
32 Chapter 6 (commencing with Section 26060) or Chapter 7
33 (commencing with Section 26070) of Division 10 of the Business
34 and Professions Code.

35 (B) The diversion is not in compliance with an applicable
36 limitation or requirement established by the board or the
37 Department of Fish and Wildlife under Section 13149.

38 (C) The diversion or use is not in compliance with a requirement
39 imposed under paragraphs (1) and (2) of subdivision (b) of Section

- 1 26060.1 of, and paragraph (3) of subdivision (a) of Section 26070
- 2 of, the Business and Professions Code.
- 3 (e) This article does not alter the regulatory authority of the
- 4 board under other provisions of law.

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