

Myth Versus Fact

Setting the Record Straight on AB 460

AB 460 (Bauer-Kahan) proposes modest, common-sense refinements to the current water rights structure. It would allow the State Water Board to take limited, short-term actions to enforce existing law to protect water rights, human health and safety, and the environment from imminent and irreparable harm.

<p>MYTH: AB 460 upends the current water rights structure.</p>	<p>FACT: AB 460 proposes modest, common-sense refinements that would enable the State Water Board to take limited, short-term actions to enforce existing law to prevent irreparable harm to legal water users and the environment.</p>
<p>MYTH: The State Water Board already possesses adequate enforcement authority to quickly stop illegal water diversions.</p>	<p>FACT: Due to restrictions in the current law, it can take weeks, or longer, for the State Water Board to stop unauthorized water use, allowing illegal diverters to drain rivers dry while the Board goes through a complicated process to stop unlawful activity. AB 460 gives the State Water Board the enforcement tools necessary to protect water rights, human health and safety, and the environment from imminent and irreparable harm.</p>
<p>MYTH: AB 460 is an overly broad response to the Shasta River curtailment issue of 2022.</p>	<p>FACT: Giving officials the authority to promptly crack down on entities that illegally divert water is a commonsense approach to discouraging unlawful activity. What happened at the Shasta River devastated salmon and hurt the tribes that rely on them and should not be allowed to happen again anywhere in California. Stealing water cannot simply be a cost of business. AB 460 is the bare minimum necessary to ensure that the State Water Board can effectively conduct its legal obligations in a timely manner.</p>
<p>MYTH: AB 460 would eliminate or weaken constitutionally protected rights, eliminate judicial review, and infringe upon due process for water rights holders.</p>	<p>FACT: AB 460 does not change the system California uses to manage our public’s water and the rights given to use this water. Instead, it simply gives the State Water Board the authority to enforce that system in the short term, to prevent immediate harm. AB 460 <u>does not</u> impose additional requirements for water users who are adhering to existing law. Recent amendments to AB 460 make it abundantly clear that there is more than adequate due process, comprehensive and timely judicial review, and no constitutional violations related to this bill.</p>
<p>MYTH: AB 460 will not give a water diverter sufficient notice before interim relief takes effect.</p>	<p>FACT: Every water rights holder has a duty to adhere to their water rights, and to not take water that rightfully belongs to someone else. AB 460 simply gives the State Water Board the very narrow authority to halt the illegal taking of water <i>immediately</i> if it is going to result in imminent or irreparable harm to fish and wildlife, tribes, communities, or other water users.</p> <p>The State Water Board must also provide for a hearing on the matter within 15 days. For illegal water rights violations that do not immediately and irreversibly harm waterways and downstream users, the State Water Board will continue to provide notice to water rights holders in lieu of immediate interim relief.</p>



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<p>MYTH: AB 460's fines are excessive and unwarranted.</p>	<p>FACT: Under current law, fines levied against illegal diverters are so low, they have become a "cost of doing business" rather than a deterrent to unlawful behavior. These fines have not been adjusted in 30 years. AB 460 increases penalties to adjust these fines to present day costs and provides that the fines keep pace with inflation.</p> <p>AB 460 was amended in committee to allow the State Water Board to administratively impose lower penalties and preserve the higher penalties to be sought by the Board in court.</p>
<p>MYTH: AB 460 will make developers hesitant to build new housing and recycled water projects.</p>	<p>FACT: This argument is a red herring. AB 460 relies on existing water laws that water users already comply with and has no impact on the planning and development of new housing or water recycling projects.</p>
<p>MYTH: Water management actions made possible through AB 460 will result in worse outcomes for the fish and wildlife resources that the bill purports to protect.</p>	<p>FACT: Fish and wildlife and others who rely on water users to divert water legally will only benefit from AB 460. The bill will close a loophole that allows illegal diverters to drain rivers and streams dry with minimal fines and no ability by the State Water Board to stop these diversions before they cause immediate and irreversible harm to vulnerable communities, small farms and the environment during times of water scarcity.</p>
<p>MYTH: AB 460 enables the public to enforce water rights via third party complaints.</p>	<p>FACT: AB 460 allows citizens to file non-binding petitions suggesting that the State Water Board take enforcement action, but the decision to launch an enforcement case remains entirely within the discretion of the Board, as under current law. AB 460's petition process is important because it provides downstream water users who are injured by illegal upstream diversions, the ability to ask for immediate relief to protect public health and the environment during drought.</p>
<p>MYTH: The remedy of interim relief by an agency is uncommon and the State Water Board should not be allowed to exercise such a remedy.</p>	<p>FACT: The remedy of interim relief provided by a state agency is common. The California Administrative Procedure Act recognizes interim suspension as a form of emergency relief and the Legislature has granted such authority to other agencies. For example, Health and Safety Code section 1569.50 allows the Department of Social Services to temporarily suspend a license of a care facility, prior to a hearing when, in the opinion of the director, the action is necessary to protect residents or clients of the facility. There are numerous other examples.</p>

