

Date of Hearing: April 29, 2025

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 1146 (Papan) – As Amended March 17, 2025

SUBJECT: Water infrastructure: dams and reservoirs: water release: false pretenses

SUMMARY: Prohibits the release of stored water under false pretenses, authorizes the State Water Resources Control Board (State Water Board) to issue an interim release order to enforce this prohibition, and imposes penalties for violations of this prohibition. Specifically, **this bill:**

- 1) Provides that the release of stored water from a reservoir is prohibited if the release is done under false pretenses.
- 2) Defines release under false pretenses as a release in a manner that is knowingly and designedly under any false or fraudulent representation or assumption as to the purpose and intended use of the water.
- 3) Authorizes the State Water Board to issue an interim relief order to a reservoir operator to prohibit the release of stored water that may be done under false pretenses.
- 4) Authorizes the State Water Board to commence an interim relief proceeding on its own motion or upon the petition of an interested party. Provides that a petition shall include all of the following:
 - a) Name and address of petitioner;
 - b) A description of the specific release of water being contested;
 - c) A statement of petitioner's interest in the contested release of water;
 - d) A description of the alleged harm or injury;
 - e) An explanation of the nexus between the release of water and the alleged harm or injury;
 - f) The relief requested by petitioner;
 - g) A statement of reasons why relief is justified; and
 - h) Any additional information deemed appropriate by the State Water Board.
- 5) Provides that the State Water Board may dismiss a petition that does not raise substantial issues that are appropriate for review.
- 6) Requires the State Water Board to provide at least 10 days' notice before a hearing date on the issuance of an interim relief order.
- 7) Authorizes the State Water Board to issue an interim relief order before providing an opportunity for hearing if the order includes a finding that immediate compliance is

necessary to prevent a release of stored water under false pretenses or to prevent imminent or irreparable injury to any of the following:

- a) Public health, safety, or welfare;
 - b) Other legal users of water; or
 - c) Instream beneficial uses of water.
- 8) Provides that if the State Water Board issues an interim relief order before providing opportunity to be heard, it shall hold a hearing within 15 days of receiving a request for hearing unless the party that is recipient of an interim relief order agrees to an extension of that period.
 - 9) Provides that violations of this bill are a misdemeanor and punishable by a fine of up to \$2,000 or by imprisonment in county jail for up to six months, or both a fine and imprisonment.

EXISTING LAW:

- 1) Authorizes the executive director of the State Water Board to issue a complaint to any person that diverts water in violation of a water right, fails to comply with a cease and desist order issued by the State Water Board, or makes a willful misstatement on a water diversion and use statement. Prescribes procedure for service of such a complaint and authorizes the State Water Board to issue an order to impose administrative civil liability after any necessary hearing (Water Code § 1055).
- 2) Subjects all dams and reservoirs to regulation and oversight by Division of Safety of Dams (DSOD) within the Department of Water Resources (DWR) (Water Code § 6075).
- 3) Defines “dam” as any artificial barrier, together with additional appurtenant structures (including training walls, spillways, outlets, tunnels, channels, pipelines, or dikes) that may impound or divert water and is either (a) 25 feet or greater in height from the natural stream bed to the top of the barrier/maximum storage elevation, or (b) impounds a capacity of 50 acre-feet of water or more (Water Code § 6002).
- 4) Excludes dams owned and operated by the federal government from regulation and oversight by DSOD (Water Code § 6009).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** This bill is in response to President Trump’s order that water be released from Success Lake and Kaweah Lake from January 31, 2025 through February 2, 2025. The author states: “Unquestionably, these releases were a political stunt by President Trump and served no purpose other than to provide a photo for a social media post. The net result was that the president placed communities downstream of the reservoirs at risk of flooding and played with their livelihoods under the false pretense that the released water would ‘help’ southern California fight wildfires. Furthermore, the released water is California water that farmers and water managers had legal rights to use under California

law. The released water should have remained in storage until the summertime when farmers and communities will actually need it. Given the effects of climate change and resulting water supply challenges, this kind of fraud, chicanery, and waste cannot be allowed to occur again.”

- 2) **Background.** On January 30, 2025, the Trump Administration notified water managers on the Tule and Kaweah Rivers that it would soon be releasing water from Success Lake and Kaweah Lake, respectively, in response to President Trump’s January 24th executive order that required federal officials exert all efforts to send more water to fight southern California wildfires.

The Tule and Kaweah rivers flow into the old Tulare Lake bed, a terminal water body that has no hydrologic connection to southern California; nonetheless, on January 31st, President Trump crowed on social media “photo of beautiful water flow that I just opened in California. Today, 1.6 billion gallons and, in 3 days, it will be 5.2 billion gallons. Everybody should be happy about this long fought Victory! I only wished they listened to me six years ago – There would have been no fire!”

On Success Dam (Success Lake), the releases went from 50 cubic-feet per second (cfs) on January 30th to a high of 1,000 cfs on January 31st and returned to 50 cfs on February 2nd. On Terminus Dam (Lake Kaweah), the releases went from 3 cfs on January 30th to a high of 1,500 cfs on January 31st and returned to 3 cfs on February 2nd.

Combined, the Trump Administration unnecessarily released more than 2 billion gallons of water. The releases were unnecessary because they could not send water to southern California as represented in the executive order. Further, there were no storms forecasted for the area and the snowpack was well below average so there was ample capacity to store the water that was released. The releases also occurred at a time when the farmers downstream did not need the water for irrigation.

- 3) **Arguments in support.** The Sierra Club supports this bill and argues it puts in place an appropriate prohibition and penalty and that “this is a timely and important bill given the increased weaponization of water in California.”
- 4) **Arguments in opposition.** The California Chamber of Commerce (Chamber) opposes this bill and argues it “would create unprecedented regulatory enforcement authority, lead to abuse, and create tremendous uncertainty for reservoir operators and water right holders throughout the state.” Further, the Chamber contends this bill would fail to prevent the example cited to justify this bill as “under the Supremacy clause of the U.S. Constitution (Article VI), federal laws supersede conflicting state laws. Courts have repeatedly ruled that state-imposed restrictions on federal water operations are preempted when they interfere with congressionally authorized purposes, such as flood control, water supply, and environmental mandates.”
- 5) **Proposed committee amendments.** The following amendments are intended to reduce the potential for abuse of the interim relief authority granted by this bill. These amendments will tighten the definition of “a release under false pretense,” remove the ability of any interested party to petition the State Water Board for interim relief, limit the duration of an interim relief order to 30 days, remove the misdemeanor and jail time penalties for a violation of this

bill, increase the penalty to \$10,000 per day of violation, and clarify a process for the State Water Board to collect any penalties against the United States for violations of this bill:

Amendment 1

6033. (a) The release of stored water from a reservoir in this state is prohibited if the release is done under false pretenses.

(b) A release under false pretenses shall mean a release of water from a reservoir in a manner that is knowingly ~~and~~, designedly, *and intentionally* under any false or fraudulent representation ~~or assumption~~ as to the purpose and intended use of the water.

Amendment 2

6034. (a) The board may issue an interim relief order to a reservoir operator to prohibit the release of stored water that may be in violation of Section 6033.

~~(b)~~ The board may commence an interim relief proceeding on its own motion. ~~or upon the petition of an interested party. The petition shall contain all of the following information:~~

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

~~(2) A description of the specific release of water that the petitioner is contesting.~~

~~(3) A statement of the petitioner's interest in the contested release of water.~~

~~(4) A description of the alleged harm or injury.~~

~~(5) An explanation of the nexus between the release of water and the alleged harm or injury.~~

~~(6) The relief the petitioner is requesting.~~

~~(7) A statement of reasons explaining why the relief is justified.~~

~~(8) Any additional information that the board may deem appropriate.~~

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

~~(d)~~ ~~(b)~~ Except as provided in subdivision (c) ~~(e)~~, the board shall provide notice at least 10 days before the date of the hearing.

~~(e)~~ ~~(c)~~ The board may issue an interim order before the opportunity for a hearing as long as the order includes a finding by the board that immediate compliance with the order is necessary because the release of water is in violation of subdivision (a) of Section 6033 or will prevent imminent or irreparable injury to any of the following:

(1) Public health, safety, or welfare.

(2) Other legal users of water.

(3) Instream beneficial uses of water.

~~(f)~~ ~~(d)~~ If the board issues an interim relief order before the opportunity for a hearing, it shall, at the request of the party to whom the order is issued, hold a hearing within 15 days of the date the board receives a request for a hearing, unless the party to whom the interim relief order is issued agrees to an extension of that period.

~~(e)~~ *An interim relief order issued by the board shall remain in effect for a period not to exceed 30 days unless the party to whom the interim relief order is issued agrees to an extension of that period. This subdivision is not a limitation on the authority of the board to issue any additional interim relief in response to changed circumstances.*

Amendment 3

6425. (a) Every person who violates any of the provisions of this part or of any approval, order, rule, regulation, or requirement of the department is guilty of a misdemeanor and punishable by a fine of not more than two thousand dollars (\$2,000) or by imprisonment in the county jail not exceeding six months, or both. In the event of a continuing violation each day that the violation continues constitutes a separate and distinct offense.

(b) *(1) Every person who violates Section 6033 or any order issued by the board pursuant to Section 6034 may be liable in an amount not to exceed is guilty of a misdemeanor and punishable by a fine of not more than two ten thousand dollars (\$10,000) (\$2,000) or by imprisonment in the county jail not exceeding six months, or both. In the event of a continuing violation each day that the violation continues constitutes a separate and distinct offense. for each day in which the violation occurs.*

(2) The penalties established under this section apply to the United States to the extent authorized under federal law, including the McCarran Amendment of 1952 (43 U.S. Code, Section 666).

(3) If the United States declines to pay a penalty, or the board determines that the United States is likely to decline to pay a fee or expense, the board may do any of the following:

(i) Initiate appropriate action to collect the fee or expense, including any appropriate enforcement action for failure to pay the fee or expense, if the board determines that federal law authorizes collection of the fee or expense.

(ii) Allocate the fee or expense, or an appropriate portion of the fee or expense, to persons or entities who have contracts for the delivery of water from the person or entity on whom the fee or expense was initially imposed. The allocation of the fee or expense to these contractors does not affect ownership of any permit, license, or other water right, and does not vest any equitable title in the contractors

(iii) Enter into a contractual arrangement that requires the United States to reimburse the board, in whole or in part, for the services furnished by the board, either directly or indirectly, in connection with the activity for which the fee or expense is imposed

(iv) Refuse to process any application, registration, petition, request, or proof of claim for which the fee or expense is not paid, if the board determines that refusal would not be inconsistent with federal law or the public interest.

REGISTERED SUPPORT / OPPOSITION:

Support

Planning and Conservation League
Sierra Club

Opposition

Almond Alliance
American Pistachio Growers
California Bean Shippers Association
California Chamber of Commerce
California Cotton Ginners & Growers Association
California Fresh Fruit Association
California Grain & Feed Association
California League of Food Producers
California Municipal Utilities Association

California Pear Growers Association
California Seed Association
California Walnut Commission
Pacific Egg and Poultry Association
Valley Ag Water Coalition
Western Growers Association
Western Tree Nut Association

Analysis Prepared by: Pablo Garza / W., P., & W. / (916) 319-2096