

Date of Hearing: May 2, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 1205 (Bauer-Kahan) – As Amended March 23, 2023

SUBJECT: Water rights: sale, transfer, or lease: agricultural lands

SUMMARY: Declares that the marketing of groundwater or surface water tied to agricultural land by an investment fund shall not be a reasonable or beneficial use of water. Specifically, **this bill:**

- 1) Declares that the sale, transfer, or lease of groundwater or surface water tied to agricultural land for profit by an investment fund shall not be considered a reasonable or beneficial use of water.
- 2) Defines “agricultural land” as any land located in one or more states and used for agricultural, forestry, or timber production purposed as determined by the federal Secretary of Agriculture and consistent with Section 3508 of Title 7 of the United States Code.
- 3) Defines “investment fund” as a private equity fund, public equity fund, venture capital fund, hedge fund, fixed income fund, real estate fund, infrastructure fund, or similar pooled investment entity that is, or holds itself out as being, engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, owning, holding, or trading securities or other assets.

EXISTING LAW:

- 1) Provides that the general welfare requires that water resources of the state be put to beneficial use to the fullest extent possible and that the waste or unreasonable use of water be prevented (the “reasonable use doctrine”) (Article X § 2, California Constitution).
- 2) Provides that all water within the state is the property of the people of the state but allows a person to acquire the right to use water through appropriation (Water Code § 102).
- 3) Declares the established policy of the state to be that every human being has the right to safe, clean, affordable, and accessible water adequate for their basic needs (Water Code § 106.3).
- 4) Declares that the use of potable domestic water for nonpotable uses such as landscape irrigation is a waste or unreasonable use per the reasonable use doctrine if recycled water is available for those purposes (Water Code § 13550).
- 5) Defines “investment fund” as a private equity fund, public equity fund, venture capital fund, hedge fund, fixed income fund, real estate fund, infrastructure fund, or similar pooled investment entity that is, or holds itself out as being, engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, owning, holding, or trading securities or other assets (Government Code § 7513.8).

FISCAL EFFECT: None. This bill is keyed non-fiscal.

COMMENTS:

- 1) **Purpose of this bill.** The author points to increasing news reports and anecdotes of large institutional investors and foreign corporations that are buying up agricultural land in California to acquire both surface water and groundwater rights in order to monetize and profit off of those rights as the reason for authoring this bill. The author maintains that this practice is not in the public's interest and is unconscionable in this era of increasing water scarcity due to drought and climate change. The author argues, "California's water resources are owned by the public and profiteering off of this precious resource cannot be tolerated when many of our communities and family farmers are having to cut back."
- 2) **Background.** This winter's rains have brought much-needed precipitation and, for the most part, have ended California's severe three-year drought (as of April 20th the U.S. Drought Monitor only shows relatively small swaths of north- and south-eastern California in "moderate drought"); however, the picture is more troubling as California has experienced ongoing drought conditions or a "megadrought" since the turn of the century that research indicates has been exacerbated by climate change.¹ Unfortunately, this a sign of what California can expect in a climate-changed future: "There is growing scientific consensus that conditions have changed, making droughts more intense. Over the past two years, low rainfall, warming, an increasingly thirsty atmosphere, and losses in snowpack have broken two of our most important water supply systems, causing hardship across California. In 2021, all runoff in the Delta watershed was used either upstream of the Delta (85%) or within the Delta (15%), leaving nothing for managing water quality or the environment. To avert a crisis, meager supplies in state and federal reservoirs were drawn down, water quality standards were relaxed, and rock barriers were installed in the Delta to keep salinity at bay."²

News reports over the past decade have highlighted different examples of hedge funds and other large institutional investors buying up agricultural land in California to market associated water resources, farm permanent crops with groundwater resources at an unsustainable rate, or grow livestock silage for export. Recent reporting in Bloomberg ("Groundwater Gold Rush," April 11, 2023), for example, focuses on how many of these large institutional investors have bought up farmland and used diminishing groundwater supplies to irrigate nut and other permanent crops at a significant profit while drawing down groundwater levels so that nearby domestic wells can no longer produce water for households. These practices have seemingly accelerated in the midst of two of California's worst droughts on record (2012-16 and 2020-22) when urban communities have had to cut back their usage and many rural communities lack access to safe and affordable drinking water.³

- 3) **Arguments in opposition.** Western Growers and a number of agricultural trade associations oppose this bill arguing that it "would prohibit a potential solution afforded by private capital invested in developing reliable supplies." Western Growers et al. maintain that private capital can help address water scarcity and "help to facilitate the conversion of unreliable, year-to-year variable, geographically diverse sources into dependable annual supplies of water to support investments in water-dependent enterprise." These entities further assert that "restricting or hindering transfers by some entities but allowing the exact same transfer

¹ A. Park Williams, Edward Cook, and Jason Smerdon et al., "Large contribution from anthropogenic warming to an emerging North American megadrought," *Science* 368, 6488 (2020): 314-318, DOI: 10.1126/science.aaz9600.

² Jeffrey Mount et al., *Priorities for California Water* (San Francisco: Public Policy Institute of California, 2022).

³ State Water Resources Control Board, 2022 *Drinking Water Needs Assessment*.

activity by others is also arbitrary and sets up a standard of winners and losers” and that transfers, often involving private investment funds, “have become a normal part of modern operations for California agriculture” and that this is likely to continue to be the case in the future. Finally, Western Growers et al. point out that a water transfer is not in and of itself a beneficial use of water and that, instead, it is the recipient of the transferred water who puts it to beneficial use thus making the consequences of this bill unclear.

- 4) **Suggested committee amendments.** Various stakeholders have expressed concerns that this bill may have a chilling effect on what many would deem legitimate, or even necessary, water transfers or trades to address scarcity and provide water for communities or farms. To avoid unintended consequences and clarify that the intent of this bill is to address speculation or profiteering on precious water resources by large institutional investors, the Committee may wish to ask the author to consider amending proposed Water Code Section 100.1 as follows:

100.1. (a) For the purposes of this section, the following definitions apply:

(1) “Agricultural land” has the same meaning as defined in Section 10213 of the Public Resources 3508 of Title 7 of the United States Code.

(2) “Investment fund” means a private equity fund, public equity fund, venture capital fund, hedge fund, fixed income fund, real estate fund, infrastructure fund, or similar pooled investment entity that is, or holds itself out as being, engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, owning, holding, or trading securities or other assets.

(3) “Speculation” means the purchase of water rights to profit from an increase in the water’s value in a subsequent transaction or without a plan to put the water to beneficial use.

(b) ~~It is~~ The Legislature hereby finds and ~~declared~~ declares that speculation or profiteering by an investment fund in the sale, transfer, or lease of an interest in any surface water or groundwater right for profit, on or below previously put to beneficial use on agricultural lands within the state by an investment fund, shall not be considered a reasonable or beneficial use of water is a waste or an unreasonable use of the water within the meaning of Section 2 of Article X of the California Constitution.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

California Apple Commission
 California Blueberry Association
 California Blueberry Commission
 California Building Industry Association
 California Chamber of Commerce
 California Cotton Ginners & Growers Association

California Farm Bureau Federation
California Fresh Fruit Association
Nisei Farmers League
Olive Growers Council of California
Plant California Alliance
Western Agricultural Processors Association
Western Growers Association

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