

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE  
Rebecca Bauer-Kahan, Chair  
SB 836 (Dahle) – As Amended April 27, 2023

**SENATE VOTE:** 39-0

**SUBJECT:** Landowner: water right holder: jointly used conduits: County of Siskiyou

**SUMMARY:** Permits a landowner or a water right holder, in the County of Siskiyou, to modify or replace segments of a conduit if the conduit either crosses the landowner's property or conveys water to which the water right holder has a right, the conduit is not under the authority of a public agency, and the modification does not impede the flow of water to a water right holder. Specifically, **this bill:**

- 1) Permits a landowner to modify or replace the portions of a conduit that crosses or runs beneath their land if the conduit is not managed by a public agency and the modification does not impede the flow of water to another water right holder that uses the conduit.
- 2) Permits a water right holder to modify or replace portions of a conduit that crosses or runs beneath another landowner's property if the conduit is not managed by a public agency and the modification or replacement does not impede the flow of water to another water right holder that uses the conduit.
- 3) Requires a water right holder that modifies or replaces a conduit that crosses or runs beneath lands owned by a public landowner to obtain written permission from said public landowner. A public landowner may condition their permission or deny the request.
- 4) Requires a water right holder that modifies or replaces portions of a conduit that crosses or runs beneath lands owned by a public landowner to provide a written notice with detailed information about the proposed work at least 30 days before start of the work.
- 5) Provides that a public landowner is not liable to any other landowner affected by a modification or replacement of a conduit that they permit to proceed on or under their land.
- 6) Provides that a landowner or water right holder proposing a modification or replacement of a conduit on another's private land shall provide written notice to a private landowner at least 30 days before start of the modification or replacement that provides detailed information on the proposed work and access to the conduit on the land.
- 7) Provides that any increase in operations or maintenance costs due to a modification or replacement of a conduit shall be the responsibility of the landowner or water right holder that makes the change.
- 8) Provides that nothing in this bill gives a landowner or water right holder the right to alter the flow of water in a manner that negatively affects another water right holder that benefits from use of the conduit.

- 9) Provides that a recorded easement or agreement that contains provisions regarding access to, or modification or replacement of, a conduit shall control if this bill is inconsistent with such a document.
- 10) Defines key terms for purposes of this bill and makes technical and conforming changes.

**EXISTING LAW:**

- 1) Defines “conduit” as a ditch, pipe line, or flume (Water Code § 7000).
- 2) Provides that when two or more landowners share the use of a conduit, well, or pumping plant to convey and lawfully use water, each landowner is responsible for reasonable expenses to maintain and repair the conduit, well, or pumping plant in proportion to each landowner’s use, unless a written agreement specifies another arrangement (Water Code § 7001).
- 3) Provides that if a landowner neglects to pay their proportion for the repair or maintenance of a conduit, well, or pumping plant, that landowner is liable in an action by other landowners that share the use of the conduit, well, or pumping plant to obtain that landowner’s contribution (Water Code § 7002).

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

**COMMENTS:**

- 1) **Purpose of this bill.** According to the author, “[this bill] would reduce water waste and contamination through earthen ditches over an easement by allowing them to be modified with an impervious material. In many cases across California, water loss to agriculture and residential property is a result of a poor delivery system. Piping can help to solve these issues for the consumer and can often reduce water waste by up to 50%. In order to achieve the State’s ambitious green policy goals and ease the burden of ratepayers, the Legislature needs to update policies to preserve this important resource. Recent drought and demands on our water system have shown that the State desperately needs water conservation solutions. This is a common sense measure to allow the possessors of water rights to improve accessibility and easily resolve easement issues between landowners.”
- 2) **Background.** This bill arises out of a specific dispute in the author’s district, but would make a significant change in property rights law. Many property owners have water conveyance facilities crossing their land. In some cases, the landowner may have granted an easement or the conduit may be shared, and an agreement specifies conditions for maintenance or modification. In other cases, the rights of the conduit’s owner may not be clear, requiring the parties to seek judicial intervention to clarify those rights when conduit maintenance requires one property owner to enter the other owner’s property. This bill would transform these legal relationships between neighboring property owners with water conveyance facilities in Siskiyou County.

A previous version of this bill (SB 463) was heard by this committee last session. This bill is more narrow than SB 463 in the following ways:

- It limits this bill’s application to conduits in Siskiyou County (rather than statewide);

- It removes “repair” of a conduit from its scope so that this bill only applies to modifications or replacements of conduits;
- It requires a landowner proposing a modification or replacement of a conduit on another’s private property to provide at least 30 days written notice before commencing the modification or replacement; and
- It strikes “notwithstanding any other law,” the removal of which preserves the validity of any other provisions of law that may be in conflict with this bill.

The committee’s analysis of SB 463 raised a number of concerns. While this bill is re-written to address some of these concerns, it continues to allow a landowner or water right holder to access another’s private property to modify or replace a conduit without first obtaining permission to do so.

- 3) **Suggested committee amendments.** The Committee may wish to request that the author make the following amendments to protect private property rights and ensure that a landowner or water right holder proposing a modification or replacement of a conduit on another’s private property is liable for any problems that arise during the course of the modification or replacement work:

7000.5... (e) A landowner or water right holder proposing a modification or replacement pursuant to (c) shall provide written notice to a private landowner at least 30 days before the start of the modification or replacement when proposing work on land owned by the private landowner, and shall include detailed information on the proposed work and access to the conduit on the land in the written notice. *The landowner or water right holder proposing a modification or replacement of a conduit shall be liable for any damage to a private landowner’s property that may occur during the replacement or modification.*

- 4) **Related legislation.** SB 463 (Dahle) of 2022 was substantially similar to this bill except that it applied statewide. SB 463 failed passage by a 5-4 vote in this committee on June 28, 2022.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

None on file

##### **Opposition**

None on file

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