



## MEMORANDUM

TO: Water Resources Committee and Alternates, Board of Directors and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: April 3, 2023

RE: Water Resources Committee to Consider Recommendations on Legislation /  
Board of Directors to Consider Same

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### Recommendation

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Recommend to the Board of Directors to adopt the following positions on state legislation:

#### Support

- Adopt a position of "Support" on SB 366 (Caballero), The California Water Plan: long-term supply targets.

#### Favor

- Adopt a position of "Favor" on AB 422 (Alanis), Natural Resources Agency: statewide water storage: tracking.
- Adopt a position of "Favor" on AB 557 (Hart), Open meetings: local agencies: teleconferences.
- Adopt a position of "Favor" on AB 735 (Berman), Workforce development: utility careers.

#### Oppose

- Adopt a position of "Oppose" on AB 460 (Bauer-Kahan), State Water Resources Control Board: interim relief.
- Adopt a position of "Oppose" on AB 676 (Bennett), Water: general state policy.
- Adopt a position of "Oppose" on AB 1337 (Wicks), State Water Resources Control Board: water shortage enforcement.
- Adopt a position of "Oppose" on SB 389 (Allen), State Water Resources Control Board: determination of water right.



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## Summary

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### S.B. 366 (Caballero), The California Water Plan: long-term supply targets.

RECOMMENDATION: SUPPORT

OBJECTIVE: Core Objective

#### Summary

This bill would repeal the existing California Water Plan requirement language and establish new Plan requirements. The Plan would be required to be updated on or before December 31, 2028 and every five years thereafter.

DWR, in coordination with the California Water Commission (Commission), the State Water Resources Control Board (State Water Board), other state and federal agencies as appropriate, and the stakeholder advisor committee would be required to develop a comprehensive Plan for addressing the state's water needs and meeting the water supply targets. The Plan shall provide recommendations and strategies to ensure enough water supply for all beneficial uses. The bill would require the plan to include a water supply planning target of 15-million-acre feet of water by 2050 with an interim target of 10-million-acre feet of water by 2040.

The bill would require each update to the Plan to include the following components:

- A discussion of various strategies to meet supply targets, including, development of new surface and groundwater storage facilities, water conservation, water recycling, desalination, conjunctive use, improved regional and statewide conveyance, stormwater capture, and water transfers;
- A discussion of the potential advantages and disadvantages of each strategy, and identification of all federal and state permits, approvals, or entitlements that may be required in order to implement the various components of the strategy and ways to streamline those permits and approvals;
- A study to support the water supply targets and to recommend programs, policies, and facilities to achieve those targets;
- An economic analysis of the costs and impacts to the state if it has inadequate water supplies to meet current demand for all sectors of the economy and environment;
- A report on the development of regional and local water projects; and,
- A long-term financing plan.

The bill would require the Director of DWR to provide an oral and written report to the Legislature by May 1 of each year with the progress toward meeting the water supply targets in an informational hearing of the relevant committees. The report shall include the list of recommended actions that require legislative intervention and those that can be implemented by DWR or other state agencies.

The bill would require DWR, in consultation with the Commission, to establish a stakeholder advisory committee, comprised of representatives of agricultural and urban water suppliers, local government, business, production agriculture, tribes, environmental justice and environmental interests, and other interested parties. The bill would require DWR to consult with and consider recommendations from the advisory committee. The bill stipulates no member of the advisory committee shall serve for longer than



the development of two updates and the advisory committee shall meet a minimum of four times annually.

The bill would require DWR to seek out and consider all relevant information from retail and wholesale water agencies, agriculture, business, tribes, environmental and environmental justice communities and any other communities potentially impacted by the Plan and from researchers and experts on climate science, climate science solutions, water storage, water conveyance, and environmental protection.

In preparing any update of the Plan, DWR would be required to conduct a series of public workshops to give interested parties an opportunity to comment on the Plan.

The bill would require DWR to develop a long-term financing plan to meet the water supply targets and include the final financing plan as part of each update. The bill financing plan must do all the following: analyze a variety of financing mechanisms; consider cost effectiveness; and recommend actions by the state to streamline projects to achieve supply targets. The financing plan would be subject to stakeholder input and public workshops.

#### Status

S.B. 366 was introduced on February 8, 2023, was amended on March 22, 2023, and has been referred to the Senate Committee on Natural Resources and Water.

#### Amendment History

As introduced, SB 366 was a spot bill that made legislative findings and declarations and stated the intent of the Legislature to enact future legislation that modernizes the California Water Plan. The bill was amended on March 22, 2023, with the language summarized above.

#### Importance to the Authority

As the weather extremes brought on by climate change exacerbate existing challenges to water resources management, it has become increasingly evident that a fundamental shift in approaches to planning and managing water resource systems is critical to restoring Authority member agency water supply reliability.

The California Water Plan, updated every five years, serves as the State's strategic plan for sustainably managing and developing water resources for current and future generations. The Plan provides a forum for various stakeholders, including elected officials, agencies, tribes, and resource managers, to collaboratively develop findings that inform decisions about water policies, regulations, actions, and investments. The California Water Plan Update 2018 (Update 2018) is the 12th in a series of plans since 1957. Update 2018 recommends significant additional investment in infrastructure and ecosystem improvements to overcome challenges to sustainability. In addition, Update 2018 recommends actions to resolve systemic and institutional issues that contribute to many of the water challenges facing California. These actions include improving integrated watershed management, strengthening resiliency and operational flexibility of existing and future infrastructure, restoring critical ecosystem functions, and improving inter-agency alignment and addressing persistent regulatory challenges.

The California Water Plan Update 2023 (Update 2023) has not yet been released, however DWR indicates Update 2023 will promote climate resilience across regions and water sectors with a statewide vision, clear goals, watershed planning framework and toolkit, and progress-tracking dashboard of indicators. Update 2023 will also include updated resource management strategies, regional planning and



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performance tracking tools, water balances, future scenarios, and other technical and policy-related activities related to water resilience and sustainability.

The California Water Plan process has grown stale, with many in the water community believing it to be merely a rote exercise completed on the mandated schedule without a true vision toward long term climate adaptation and planning. SB 366, sponsored by the California Municipal Utilities Association (CMUA), would modernize the California Water Plan, and include a water supply planning target of 15-million-acre feet of water by 2050 with an interim target of 10-million-acre feet of water by 2040. The bill stipulates that the target shall include new and expanded supplies from the strategies, including, but not limited to, those relating to the development of new surface and groundwater storage facilities, water conservation, water recycling, desalination, conjunctive use, improved regional and statewide conveyance, stormwater capture, and water transfers. The goal of this change would be to force the State to do longer term planning for the good of all regions; by placing some parameters around the goals and ensuring a variety of strategies are considered, this bill intends to hold DWR and other State agencies accountable in this process.

One area of SB 366 that may still be revised are the current supply planning targets; staff understand that the sponsors are still doing some scientific analysis of these goals. It will be critical to ensure that the supply targets ultimately enacted in this bill are based on solid evidence as they will be referenced for many years to come.

Pros:

- Would improve species habitat mitigation outcomes through the use Watershed Plans that allow for mitigation investments at the best available sites for species recovery and resilience.
- Would expedite state permitting of water supply and flood protection projects.
- Would save public agencies and public utilities significant costs by averting delays on projects, including Authority member agency projects in which delay can amount to millions of dollars per year.

Cons:

- The complexity of the environmental permitting process makes changes difficult even when the changes improve environmental outcomes for species, save public funding, and accelerate adaptation to a rapidly changing climate.

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[A.B. 422 \(Alanis\) – Natural Resources Agency: statewide water storage: tracking](#)

**RECOMMENDATION: FAVOR**

**OBJECTIVE: Improve Outreach and Education**

Existing Law

Existing law establishes the Natural Resources Agency (Agency), composed of departments, boards, conservancies, and commissions responsible for the restoration, protection, and management of the state's natural and cultural resources. Existing law establishes in the agency the Department of Water Resources (DWR), which manages and undertakes planning with regard to water resources in the state.



## Summary

This bill would require the Agency, on or before June 1, 2024, to post information tracking the progress to increase statewide water storage on its publicly available internet website and to keep that information updated.

## Status

A.B. 422 was introduced on February 2, 2023, and has been referred to the Assembly Committee on Water, Parks, and Wildlife.

## Importance to the Authority

California relies on an elaborate network of water storage and delivery systems to supply cities, farms, businesses and the environment with adequate water year-round. It's becoming increasingly evident, however, that a changing climate is affecting the timing and pattern of snowmelt and runoff, upsetting the historical hydrology the current water system was designed to address. Droughts are becoming more frequent and prolonged, while rainfall events have become more intense and flashy, leading to more extensive flooding. These trends have highlighted that modification of existing facilities and investments in new infrastructure, including additional storage capacity, is becoming more essential as a tool to adapt to changed conditions.

There have been various policy initiatives and funding opportunities over the past decade to expand water supplies in California. In 2014, Proposition 1 was passed, dedicating \$2.7 billion for investments in water storage projects. In 2020, the Newsom Administration released the *Governor's Water Resilience Portfolio*, serving as the Administration's blueprint for retooling California's water management system to meet the challenges presented by extreme droughts, floods and rising temperatures. In August 2022, Governor Newsom released *California's Water Supply Strategy: Adapting to Hotter, Drier Future* (Water Supply Strategy). This policy document outlines the state's strategy and a set of four priority actions to adapt and protect water supplies in an era of rising temperatures. Among these priority actions, is a call for expanding water storage capacity above and below ground by four-million-acre feet.

Despite the recognition by the State for the need to expand water supplies, California has yet to build any major water-storage infrastructure greater than one million acre-feet since the 1970s. The author of AB 422 has introduced this bill to hold the State accountable by requiring the Agency to create and publish a dashboard on its website to track the state's progress on expanding water supplies in California. By establishing a dashboard, stakeholders and the public will have a clear view of the high-level progress being made on this effort and how tax dollars are being put to use.

Numerous factors, including the impacts of climate change and California's growing population, have put immense pressure on our aging water infrastructure. In order to meet our 21st century needs for both water supply reliability and enhanced ecosystem health, it is imperative that the State advances the efforts emphasized in policy initiatives like the Governor's Water Resilience Portfolio and the Water Supply Strategy. This bill may help shed light on the status of storage capacity improvement efforts and inform stakeholders what progress is being made. For these reasons, staff recommend a position of "Favor".



Staff intends to seek improvements to the legislative or regulatory language to increase the specificity of the information contained within the dashboard, specifically to include additional information that would improve the public's knowledge of regional improvements.

Pros:

- The bill would create a location where the public could easily track the progress towards storage goals implemented by the State.

Cons:

- The legislation could be improved to increase the transparency around regional water storage improvements and potentially expanded to include other items, such as water yield, etc, that would further inform the public and policymakers.

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[A.B. 557 \(Hart\) – Open meetings: local agencies: teleconferences.](#)

**RECOMMENDATION: FAVOR**

**OBJECTIVE: Improve Outreach and Education**

Summary

During the last three years of the COVID-19 pandemic there have been several bills to allow public agency elected boards subject to the Brown Act to meet without having to do so in person. AB 361 (Rivas, 2021) was enacted to permit local agencies to continue meeting virtually during emergencies if the legislative body determines virtual meetings are necessary to maintain public health and safety. AB 361 allows local agencies to virtually conduct public meetings without disclosing board members' locations; however, it expires on January 1, 2024. The legislature followed up by enacting AB 2449 (Rubio, 2022) which builds upon AB 361 and expands flexibility for legislative bodies to allow members to teleconference into meetings without revealing private addresses and exempting such from in-person public attendance, albeit with significant limitations. AB 2449 was enacted with a January 1, 2026, sunset.

AB 557 picks up where AB 2449 left off to provide a solution moving forward for publicly elected boards that may face yet another emergency where the possibility of meeting in person would increase the risk of contracting a serious illness, or in the event of another emergency that precludes meeting at a physical location. The bill covers situations such as a flood or an earthquake.

First, AB 557 amends the teleconferencing requirements for members of local legislative bodies under the Ralph M. Brown Act (Act) to allow the use of remote meetings indefinitely by removing the January 1, 2026, sunset, as specified.

AB 557 would allow publicly elected boards to use teleconferencing without requiring that agendas be posted at each teleconference location and that at least a quorum of the members participate from locations within the boundaries of the territory of the agency, if the board complies with the following:

- A. The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
- B. The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.



- C. The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

The bill requires specified processes for public comment that ensure the public continues to exercise full access. The bill also requires the legislative body to make specified findings every 45 days related to the continued need for teleconference meetings due to the emergency.

#### Status

A.B. 557 was introduced on February 8, 2023, and has been referred to the Assembly Committee on Local Government.

#### Importance to the Authority

The enactment of AB 361 (Rivas) in 2021 and AB 2449 (Rubio) in 2022 provided the flexibility that local agencies needed during an emergency that interrupted the ability to physically convene the members of a legislative body or the public, to conduct the business of providing essential public services. Should the Governor be delayed in issuing an executive order in another qualifying emergency, under AB 557 local legislative bodies would be empowered to convene using teleconferencing while maintaining high standards of public transparency and access.

The bill is sponsored by the League of California Cities, California State Association of Counties, and the California Special Districts Association to provide their members a critical tool for use in other emergencies even after the COVID-19 state of emergency expires.

The San Luis & Delta-Mendota Water Authority seeks to serve its member agencies and the communities and ecosystems they serve throughout their respective service areas and welcomes the public's participation in all Board and Board Committee meetings. Under the Governor's executive orders issued in response to the COVID-19 pandemic, Authority board members used the teleconference option for participation in meetings and public comment. AB 557 would provide an option for the Board to use teleconferencing for remote meetings during a Governor proclaimed emergency or a local emergency proclaimed by the San Luis & Delta-Mendota Water Authority Board.

#### Pros:

- Would provide a local official with the flexibility to participate in meetings via teleconference, outside of a declared state of emergency, while also maintaining the official's privacy regarding the teleconference location.
- May provide opportunities for a local official to represent their constituents through participation in meetings they previously would be unable to attend in person.

#### Cons:

- Requires a 45-day check-in by the legislative body with a declaration of a continued emergency even if the event is long-term.
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## A.B. 735 (Berman) – Workforce Development: utility careers.

### RECOMMENDATION: FAVOR

### OBJECTIVE: Improve Outreach and Education

#### Summary

AB 735 would establish the High Road Utility Careers (HRUC) program, to be administered by the Board, to connect existing resources with individuals interested in careers in the utility sector and ensure a continued reliable workforce for California utilities. The bill would require the Board to administer the HRUC program through partnerships with statewide water, wastewater, and energy utility associations and to coordinate the program with existing and future programs and initiatives administered by the Board.

The HRUC program would create partnerships with regional and State trade associations, industry groups, vocational training programs offered through nonprofit, community-based organizations, and unions to promote training on essential job duties required for working in utilities and on diversity, equity, and inclusion. The HRUC program would prioritize supportive services and career placement assistance to people from underserved and underrepresented populations. The HRUC program would also educate the potential workforce through a network of trainings, workshops, classes, and presentations on regional and statewide opportunities in the utility workforce.

The bill would require the HRUC program, upon appropriation by the Legislature, to dedicate funding and resources toward goals, including connecting workers to high-quality jobs or entry-level work with defined routes to advancement and increasing skills and opportunities while expanding pipelines for low-income populations.

This bill would also require the State Department of Education, by January 1, 2025, to partner with regional and statewide trade associations and industry groups for water, wastewater, and electric utilities, and with vocational training programs offered through unions and nonprofit, community-based organizations, to develop and distribute informational materials for career guidance to pupils in grades nine through 12, regarding the potential for employment, educational requirements, and other matters pertaining to careers in these utilities. Interested pupils would be directed to the Employment Development Department for potential placement in utility jobs.

#### Status

A.B. 735 was introduced on February 13, 2023, and has been referred to the Assembly Committee on Labor and Employment.

#### Importance to the Authority

California's utility sector, including the water industry, is currently experiencing retirements and other departures, in addition to recruitment challenges, in critical roles. The utility workforce is a valuable resource as it provides essential services to the State. Efforts are urgently needed for education and outreach to fill these employment gaps and to promote these positions to the next generation.

#### Pros:

- AB 735 would create a long-term, statewide program, that enhances partnerships with utilities and schools to advance career placement through providing the necessary services, training, and





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education. The program would also prioritize supportive services and career placement assistance to people from underserved and underrepresented populations.

- AB 735 would provide resources to obtain and retain employment in the utility sector, to ensure a continued reliable workforce for California utilities, including the water industry.

Cons:

- AB 735 does not appropriate funds for the HRUC program, so a subsequent state budget appropriation will be required to launch the most beneficial aspects of the program.
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### [A.B. 460 \(Bauer-Kahan\) – State Water Resources Control Board: interim relief.](#)

**RECOMMENDATION: OPPOSE**

**OBJECTIVE: Core Objective**

Summary

This bill would authorize the State Water Board to issue an interim relief order in appropriate circumstances, after notice and an opportunity for a hearing, in adjudicative proceedings to apply or enforce any of the following:

1. Section 2 of Article X of the California Constitution;
2. The public trust doctrine;
3. Water quality objectives or principles and guidelines adopted under subdivision (b) of Section 13142, Section 13149, Section 13170, or 13241;
4. The requirements set forth in permits, licenses, certificates, and registrations issued under Part 2 (commencing with Section 1200), including actions that invoke the State Water Board's reserved jurisdiction or continuing authority;
5. Section 5937 of the Fish and Game Code.

The bill would prohibit the State Water Board from accepting a petition that does not include all of the following information:

1. The name and mailing address of the petitioner.
2. A description of the specific diversion or use of water that the petitioner is contesting.
3. A statement of the petitioner's interest in the contested diversion or use of water.
4. Identification of the adjudicative proceedings in which interim relief is requested.
5. A description of the harm or injury complained of.
6. An explanation of the nexus between the diversion or use and the alleged harm or injury.
7. The relief the petitioner is requesting.
8. A statement of reasons explaining why the relief is justified.
9. Any additional information that the State Water Board may deem appropriate.

The bill would give the State Water Board the discretion to require that the evidence to be considered be based on declarations under penalty of perjury, the testimony of witnesses at the hearing, or both. The bill would also require the State Water Board to consider oral or written legal arguments provided in a timely manner by the parties. The bill would authorize the State Water Board to dismiss a petition that does not raise substantial issues that are appropriate for review.



The State Water Board may commence an interim relief proceeding on its own motion or upon the petition of an interested party. The bill would require the State Water Board provide at least 20 days' notice before the hearing date, unless the State Water Board concludes that consideration of the matter is urgent. If an interim relief order is issued without providing at least 20 days' notice before the hearing date, or if the State Water Board issues an interim relief order after considering the declaration of any witness who is not available for cross-examination, the interim relief order shall remain in effect for no more than 180 days, unless the party to whom the order is issued agrees to an extension of that period.

The bill requires the State Water Board, when determining whether to provide interim relief, and the nature and extent of the relief, to consider all relevant circumstances, including the effects on other legal users of water, fish, wildlife, and other instream beneficial uses, the extent of harm, the necessity for relief, and any appropriate measures to minimize any adverse effects of providing interim relief. The bill stipulates sufficient grounds shall exist for interim relief upon the same showing as would be required for a superior court to grant a preliminary injunction.

As part of the interim relief order, the State Water Board may require a water diverter or user to do any of the following:

1. Cease all harmful practices;
2. Employ specific procedures and operations to prevent or mitigate the harm;
3. Complete technical and monitoring work and prepare and submit reports on that work, including draft environmental documentation;
4. Participate in, and provide funding for, studies that the State Water Board determines are reasonably necessary to evaluate the impact of the diversion or use that is the subject of the adjudicative proceeding;
5. Reimburse the State Water Board's expenses for the preparation of any necessary environmental documentation;
6. Take other required action.

The bill would require the State Water Board to set a schedule for compliance with any relief order. The bill also requires the State Water Board to set a schedule, as soon as reasonably possible, for consideration of permanent relief. The bill specifies that any permanent relief shall be granted after notice and an opportunity for a hearing.

The bill provides that any interim relief order issued by the State Water Board is exempt from the California Environmental Quality Act (CEQA) as long as (1) the State Water Board finds that providing interim relief will not have a significant adverse effect on the environment, or (2) that providing interim relief will result in environmental benefits or prevent harm to environmental resources, and the benefits provided or harm prevented outweighs any adverse effects that may result from providing interim relief. If the State Water Board makes these findings, the bill would require the State Water Board to adopt a reporting and monitoring program in accordance with Section 21081.6 of the Public Resources Code.

The bill authorizes the State Water Board to review and revise any part of an interim relief order at any time after notice to all interested parties and an opportunity for a hearing.

If a water diverter or user does not comply with an interim relief order, the bill would require the Attorney General, upon the request of the State Water Board, to petition the Superior Court for prohibitory or



mandatory injunctive relief, as necessary, through the issuance of a temporary restraining order, preliminary injunction, or permanent injunction. The bill would require the Superior Court to impose the civil penalty if it determines by a preponderance of the evidence that the water diverter or user subject to the interim relief order has violated the order.

Any person or entity that violates an interim relief order would be liable for a civil penalty not to exceed the sum of \$10,000 for each day in which the violation occurs and \$5,000 for each acre-foot of water diverted in violation of the interim relief order. In determining the appropriate amount, the court or the State Water Board, as the case may be, would be required to consider all the relevant circumstances, including the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action undertaken by the violator. All funds recovered pursuant to these violations are to be deposited in the Water Rights Fund.

#### Status

A.B. 460 was introduced on February 6, 2023, and has been referred to the Assembly Water, Parks, and Wildlife and Judiciary Committees. The Asm Water, Parks and Wildlife Committee hearing is scheduled for April 18, 2023.

#### Amendment History

According to staff, the author of the bill plans to include an amendment that would increase penalties in Water Code Section 1846 from \$500 per day to \$10,000 per day, as well as add a \$5,000 per acre foot penalty. The author is also considering increasing the penalty under Water Code, Section 1052 (trespass). The increase is still TBD and will not be as high as in Section 1846.

#### Importance to the Authority

AB 460 derives from a recommendation in the Planning and Conservation League's (PCL) recent report, *Updating California Water Laws to Address Drought and Climate Change* (Report). The Report stipulates that effective water rights administration depends, in part, on adequate and timely enforcement and that providing the State Water Board with the ability to impose interim relief orders would allow urgent decisions to be made in a timely manner, eliminate the need for duplicative proceedings in court, and better protect the state's water resources.

The PCL Report notes the State Water Board and the courts have concurrent jurisdiction to enforce water rights law, including proceedings brought in response to violations of water right permits and licenses, violation of the public trust doctrine, or waste or unreasonable use of water. Although both entities maintain jurisdiction, the processes to take enforcement action differ. Courts maintain the ability to take immediate relief action, through a temporary restraining order or a preliminary injunction, without opportunity for a full evidentiary hearing. The State Water Board, on the other hand, may only impose requirements after providing an opportunity for an evidentiary hearing. Further, the courts are not required to comply with CEQA before taking action, whereas the State Water Board must comply with CEQA or rely on an exemption from CEQA before taking action.

#### What AB 460 Seeks to Resolve

According to the PCL Report, existing law doesn't include any specific authority or administrative procedures to provide for interim relief during the pendency of an enforcement action. The Report argues that without the ability to impose interim relief, irreparable damage can continue to occur to the



environment and other water right holders during the length of an adjudicative proceeding. Between procedural requirements with particular time frames that must be met before final action can be taken, and compliance with CEQA, the Report authors argue that the State Water Board is routinely unable to take swift action on urgent matters.

#### Inspiration for AB 460

According to the author, AB 460 is inspired by an incident last August where a group of farmers, collectively representing the Shasta River Water Association, knowingly violated a curtailment order issued by the State Water Board. For several days the farmers illegally diverted water from the Shasta River, opting to face a fine from the State Water Board rather than the mounting costs from hauling water and purchasing hay to replace dried out pastures. Under existing law, the State Water Board could only assess a penalty of up to \$500 per day for violation of the curtailment order, which ultimately resulted in a \$4,000 fine for the ranchers. In addition, existing law prevented the State Water Board from acting more swiftly. Execution of a cease and desist order (CDO) is delayed because the party receiving the CDO has 20 days to request a hearing. As a result, the State Water Board may have to wait 20 days before it can stop harmful activities. The author of AB 460 argues that the small penalties and long delay underscore the limited powers that the State Water Board has to quickly respond to illegal diversions.

While the author states that AB 460 is meant to respond to this incident on the Shasta River, the bill would authorize the State Water Board to issue interim relief to address much more than violations of curtailment orders. In addition to enforcing curtailment orders, the bill would apply to:

- Enforcement of Fish and Game Code Section 5937, which provides protection for fishes below dams.
- Enforcement of the public trust doctrine, which could authorize the State Water Board to adopt an interim relief order imposing new minimum instream flows.
- Section 2 of Article X of the California Constitution.
- Enforcement of water quality objectives or principals and guidelines, which could result in interim relief orders to address discharges, in addition to diversions.

#### Legislative Initiatives to Require Interim Relief

Limitation on the ability of the State Water Board to require interim relief has resulted in multiple bills over the last three decades. SB 681 (Pavley, 2009) included many of the same provisions present in AB 460. It, too, would have authorized the State Water Board to issue interim relief orders in appropriate circumstances, authorize the State Water Board to require water diverters or user to take numerous actions including completing technical studies and environmental documentation, as well as authorize fines for any person or entity who violates any interim relief order. SB 681 ultimately failed to pass the California Senate.

#### Concerns with AB 460

Public trust doctrine – AB 460 authorizes the State Water Board to issue an interim relief order to enforce the public trust doctrine, however, the bill provides no definition for that term. Despite its function as a foundational aspect of environmental law, courts have been unable to come to an agreement on a precise definition and when and where it applies. The doctrine requires the state to hold in trust designated resources for the benefit of the people; however, which natural resources it applies to have been subject



to debate. Providing the State Water Board with the power to determine what the public trust doctrine applies to and when could result in troubling precedents being set.

Section 5937 of the Fish and Game Code – AB 460 also authorizes the State Water Board to issue interim relief to apply or enforce Section 5937 of the Fish and Game Code. This section of the FGC stipulates that the owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. The key actionable item in this section being that fish must be maintained in “good condition” below the dam. AB 460 would allow interested parties upset with dam releases to seek immediate state intervention and authorize the State Water Board to essentially take over operations, potentially at a moment’s notice. It is worth noting that the PCL report recommends amending Section 5937 to allow sufficient water *of sufficient flow and temperature* at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water of sufficient flow and temperature to pass over, around or through the dam.

Notice, hearing, and standard of review – This bill would allow the State Water Board to issue interim relief without a notice and hearing if the Board considered the matter to be “urgent.” The lack of clarity regarding the standard of review compounds these concerns. The bill specifies that sufficient grounds for an interim relief order would require the same showing as would be required for a superior court to grant a preliminary injunction. It is not clear whether this is in reference to the burden of proof, standard of review, process, or all three. It is also difficult to reconcile this directive with other aspects of the bill that allow the State Water Board to take into account other considerations when deciding whether to issue interim relief.

AB 460 would also authorize the State Water Board to issue an interim relief order with less notice, and potentially under a lower standard, than any state or federal court is required to meet in order to grant similar relief<sup>1</sup>. It is also worth noting that the lines between plaintiff and judge are blurred in AB 460. Unlike a preliminary injunction where an independent court would determine whether “sufficient grounds” exist to issue an order, AB 460 would place this authority with the State Water Board, which may be acting on its own motion.

Requirements and Fines for Water Rights Holders - AB 460 could place onerous and costly requirements on water users involved in interim relief. Water users could be ordered to complete technical and monitoring work at their own expense, whether that be the water user conducting the studies or reimbursing the State Water Board for the preparation of any necessary environmental documentation. Water users could also be required to participate in, and provide funding for, any studies that the State Water Board determines are reasonably necessary to evaluate the impact of the diversion or use that is the subject of the adjudicative proceeding. In addition, if a water right holder violates the interim relief order, they would be liable for penalties of up to \$10,000 per day plus \$5,000 per acre-foot.

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<sup>1</sup> California Code of Civil Procedure section 527 prohibits a court from issuing a preliminary injunction without notice to the opposing party.



Pros:

- The bill, if enacted, could increase the ability of the State Water Resources Control Board to enforce the existing water rights system with greater penalties for violations.

Cons:

- Significant concerns with expanded authority granted to SWRCB to pursue interim relief under a wide variety of conditions that are currently subject to due process
  - The fact sheet for the bill states this bill is intended to respond to last year's incident on the Shasta River, however, the scope of the bill applies far beyond violations of curtailment orders during emergency drought conditions.
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## A.B. 676 (Bennett) – Water: general state policy.

### RECOMMENDATION: OPPOSE

### OBJECTIVE: Core Objective

#### Summary

This bill would provide specific examples of the use of water for domestic purposes. These purposes include, but are not limited to, water use for all of the following:

1. Sustenance of human beings and household conveniences;
2. Care of household livestock and animals;
3. Care of household gardens; and,
4. Deliveries of water by community water systems, other public, municipal, and industrial water agencies, and water corporations regulated by the Public Utilities Commission.

The bill would provide that all water rights remain subject to the reasonable use doctrine, pursuant to Section 2 of Article X of the California Constitution, and the public trust doctrine, as provided in *National Audubon Society v. Superior court* (1983) 33 Cal.3d 419 and subsequent California court decisions. The bill would also state that pursuant to Water code section 85023—which is a general policy statement in the Delta Reform Act—the longstanding constitutional principle of reasonable use and the public trust doctrine provide the foundation for state water management policy.

#### Status

A.B. 676 was introduced on February 14, 2023, was amended on March 13, 2023, and has been referred to the Assembly Committee on Water, Parks, and Wildlife.

#### Amendment History

As originally introduced, AB 676 would have declared that the use of water for 'health and safety' purposes is the highest use of water. On March 13, the bill was amended, reverting to declaring 'domestic purposes' as the highest use of water. However, the bill now provides specific examples of 'domestic purposes' and explicitly states that all water rights remain subject to the reasonable use and public trust doctrines.

#### Importance to the Authority

AB 676 is another piece of water rights legislation that has been introduced this year. The bill seeks to amend Water Code Section 106, a foundational code section for California's water rights system. This





code section provides a clear policy directive that the highest use of water in California is for domestic purposes and that the next highest use is for irrigation. This section creates an important legal tool for the State Water Resources Control Board (State Water Board) and courts in regulating and managing water resources in the state, ensuring that water is used in a sustainable and equitable manner that benefits all water users. AB 676 could confuse the understanding of this foundational code section by inserting redundant references to existing laws that have nothing to do with establishing priority of use.

AB 676 would incorporate the public trust doctrine into Section 106. While it appears to be an attempt to codify existing law, it is not an accurate statement of the law. It would broaden the reach of the public trust doctrine, “as provided in *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419,” to “all water rights”. However, the holding of *National Audubon* does not cover some water rights, such as non-interconnected groundwater and treaty rights. Second, the case law after *National Audubon* provides little guidance about what the public trust doctrine’s demands actually are, so it remains unclear what the doctrine actually requires in practice. This bill would not provide any additional clarity. This is problematic in its inaccuracy and lack of clarity and is likely to do little more than cause confusion. The same can be said with regards to the bill’s reference to Water Code section 85023, which is a general policy statement in the Delta Reform Act. This may be viewed as applying this policy more broadly than just to the Bay-Delta, and how this would be applied in practice is completely unknown.

The bill also states that “[a]ll water rights remain subject to the reasonable use doctrine...” The reasonable use doctrine is already established in Article X, Section 2 of the California Constitution, so it is unclear why there is a need to restate it in this code section. All this would do is create confusion about whether the statute means something different than the Constitution, since it could be read to suggest that the “reasonable use doctrine” is something different than Article X, Section 2—which it is not under statute or court interpretation. It is also possible the proposed paragraph (1) of subdivision (c) could be confused with the meaning of Water Code section 100, which also states a version of the state policy of reasonable and beneficial use of the state’s water resources.

At best, subdivision (c) includes restatements of existing law, making it superfluous. At worst, it will cause confusion about the meaning and intent of the Legislature within this important section of the Water Code.

AB 676 also attempts to clarify the meaning of “domestic purposes.” The bill provides a non-exclusive list of domestic purposes of water use, which are largely reflective of uses that existing law already provides. The California Code of Regulations, specifically, Cal. Code Regs. Tit. 23 § 660, already defines “domestic use” as:

*The use of water in homes, resorts, motels, organization camps, camp grounds, etc., including the incidental watering of domestic stock for family sustenance or enjoyment and the irrigation of not to exceed one-half acre in lawn, ornamental shrubbery, or gardens at any single establishments. The use of water at a camp ground or resort for human consumption, cooking or sanitary purposes is a domestic use.*

There are differences between the type of uses covered in the regulations and AB 676. The bill could be reconciled to reflect the uses included in the regulations, but Authority staff believes there is no need to incorporate the regulations into statutory language.





Pros:

- The bill could provide clarity to the meaning of domestic purposes under California statute.

Cons:

- The legislation could inject significant uncertainty into the administration of the water rights system
  - The legislation has inconsistencies between the statutory language and existing regulatory language that defines “domestic purposes”.
- 

## A.B. 1337 (Wicks) – State Water Resources Control Board: water shortage enforcement.

### RECOMMENDATION: OPPOSE

### OBJECTIVE: Core Objective

#### Summary

The bill would authorize the State Water Board to adopt regulations for any of the following reasons:

- a) To prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water;
- b) To promote water recycling or water conservation;
- c) To protect public trust resources;
- d) To require curtailment of diversions when water is not available under the diverter’s priority of right; and,
- e) In furtherance of any of the purposes of this section, to require reporting of diversion or use or the preparation of monitoring reports.

The bill would authorize the State Water Board to implement regulations through orders curtailing the diversion or use of water under any claim of right. The bill would require the State Water Board to provide notice and an opportunity to be heard, except where an opportunity to be heard before the issuance of an order would be impractical given the likelihood of harm to the purposes outlined in the above A-E, or other relevant circumstances. The bill stipulates if the State Water Board does not provide an opportunity to be heard before the issuance of an order, the board shall promptly provide the opportunity after the issuance of the order. In the event the State Water Board issues an order without a hearing, the bill provides the process for reconsideration described in Chapter 4 of the Water Code (commencing with section 1120) as an example of a process the Board could utilize for a subsequent hearing. However, the bill does not prescribe a process for that subsequent hearing. The bill would allow the State Water Board to tailor the hearing to the circumstances of the order and allow the hearing to be collective, rather than an individual, process. Additionally, the bill would allow the hearing to be oral or written.

The bill stipulates a person or entity may be civilly liable for a violation of any regulation or order issued under this chapter in an amount not to exceed the sum of the following:

- 1) \$1,000 for each day in which the violation has occurred; and,
- 2) \$2,500 for each acre-foot of water diverted or used in violation of the applicable requirement.



The bill would authorize civil liability to be imposed by the superior court. The bill would also authorize civil liability to be imposed administratively by the State Water Board pursuant to Section 1055 of the Water Code.

Lastly, the bill exempts any regulation or order issued by the State Water Board under this chapter from CEQA.

#### Status

A.B. 1337 was introduced on February 16, 2023, and has been referred to the Assembly Committees on Water, Parks, and Wildlife and Judiciary.

#### Importance to the Authority

AB 1337 greatly expands the authority of the State Water Board to restrict diversions through regulation and to implement these regulations through orders curtailing the diversion or use of water under any claim of right. The authority to adopt regulations in AB 1337 is similar to section 1058.5. However, section 1058.5 only authorizes the State Water Board to adopt emergency regulations in certain drought years that remain in effect for up to one year. AB 1337 would authorize the State Water Board to adopt permanent regulations in any water year. Additionally, the bill would allow the State Water Board to adopt regulations to “protect public trust resources,” which is not included in section 1058.5.

While the bill stipulates the State Water Board would be required to provide notice and opportunity to be heard before issuance of an order, the bill additionally authorizes the State Water Board to issue a curtailment order *before* opportunity to be heard in the event it feels it would be impractical given the likelihood of harm to the purposes described in Section 1065 (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 protect public trust resources, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of these purposes to require reporting of diversion or use or the preparation of monitoring reports) or *other relevant circumstances*.

The practice of issuing curtailment orders before a hearing would have serious implications for water diverters. It would be unlikely that the State Water Board can fill up every Board agenda for months with hearings, and water diverters who have been curtailed without opportunity to be heard first, would likely be impacted by the timing of when the State Water Board can put their hearing on the agenda. Essentially, AB 1337 would provide authority for the State Water Board to adopt regulations when it sees fit and for nearly any purpose it sees fit. Once those regulations are adopted, the bill would provide the State Water Board the ability to enforce without appropriate due process.

The bill also provides that any regulation or order issued by the State Water Board pursuant to the provisions in this bill or Section 1058.5 of the Water Code would be exempt from the requirements of CEQA. While AB 460 (Bauer-Kahan) also provides the State Water Board with a CEQA exemption for any interim relief order issued, Ab 460 requires the State Water Board to first make any finding that the regulation or order will not have a significant adverse effect on the environment, or that implementing the regulation or order will result in environmental benefits or prevent harm to environment resources, and that the benefits provided or harm prevented outweighs any adverse effects that may result from adopting a regulation or implementing an order. This requirement is not present in AB 1337.



Pros:

- None identified

Cons:

- Significant concerns with expanded authority granted to SWRCB to pursue interim relief under a wide variety of conditions that are currently subject to due process
- 

[S.B. 389 \(Allen\) – State Water Resources Control Board: determination of water right.](#)

**RECOMMENDATION: OPPOSE**

**OBJECTIVE: Core Objective**

Summary

The bill would authorize the State Water Board to investigate the diversion and use of water from a stream system to determine whether the diversion and use are based upon appropriation, riparian right, or other basis of right. The bill would authorize the State Water Board to, in furtherance of an investigation, issue an information order to a water right claimant, diverter, or user to provide technical reports or other information related to a diversion and use of water, including but not limited to all of the following:

- 1) Information in addition to any information required to be reported pursuant to Part 5.1 (commencing with Section 5100);
- 2) Information related to the basis of the water right claimed;
- 3) Information related to the patent data claimed for the place of use;
- 4) Information related to the notice date of the appropriation and the date of actual delivery of water to beneficial use;
- 5) Information related to prior diversions and use, including direct diversions and diversions to storage; and,
- 6) Information related to the diversions and use of transferred water.

The bill authorizes the State Water Board to, after notice and opportunity for hearing, issue a decision or order determining the diversion and use basis of right, including the authorized scope of the diversion and use, or issue a decision or order determining that the diversion and use is not authorized under any basis of right.

In determining under this article whether a holder of an appropriative water right has forfeited the right or any portion of the right pursuant to Water Code section 1240 and 1241, the bill would not require the State Water Board to find the existence of a conflicting claim by any water right holder within the stream system during the period of forfeiture. The bill stipulates that in any State Water Board proceeding to determine a diversion and use basis of right under this article, the water right claimant, diverter, or user shall have the burden of proving by the preponderance of evidence the elements of the basis of right.

Status

S.B. 389 was introduced on February 9, 2023, and has been referred to the Senate Committee on Natural Resources and Water.



### Importance to the Authority

SB 389 presents significant concerns. The issues identified are as follows:

The investigation process outlined in this bill would apply to permittees and licensees who are operating under permits or licenses issued by the State Water Board or a predecessor state agency.

SB 389 would authorize the State Water Board to order a diverter to submit many technical reports in support of a claimed right. Water right adjudications can involve multiple rounds of testimony that included both sides presenting extensive historical, engineering, and agricultural expert testimony. Compiling technical reports of this level could be incredibly time consuming and costly for diverters and should not be required simply because the State Water Board is interested in the basis of right. An alternative approach to this process would be for the first submission to the State Water Board be from whatever *existing* material the diverter has, with any additional information being based on a determination by the State Water Board that the submission is inadequate.

Next, the bill provides that after notice and opportunity for hearing, the State Water Board may issue a decision or order determining the diversion and use basis of right, including the authorized scope of the diversion and use, or may issue a decision or order determining that the diversion and use is not authorized under any basis of right. It's unclear what "after notice and opportunity for hearing" means and whether or not a diverter may obtain a hearing. Further, this language does not stipulate the conditions in which a requested hearing could be denied.

SB 389 would implement a rule that there doesn't have to be a conflicting water use for a non-use to be a partial or complete forfeiture. This provision would reverse the Court of Appeal's decision in the *North Kern Water Storage Dist. v. Kern Delta Water Dist. (Cal. Ct, App. Jan 31, 2003)* and *Millview County Water Dist. v. State Water Resources Control Bd. (2014) 229Cal.App.4th 879 (Millview I)*.

Lastly, this bill changes the burden of proving by the preponderance of evidence the elements of the basis of right on the diverter. According to the Planning and Conservation League Report, imposing the burden of proof upon a water right claimant in a State Water Board proceeding allows the State Water Board more promptly to identify and quantify the rights to surface water that remain outside of the Water Commission Act statutory system than is possible under existing law. The Report further argues this burden principle is like the one the State Water Board uses when it conducts a statutory adjudication of a stream system to determine the basis of right of claimants to a stream. Section 2528 of the Water Code reads "Whenever proceedings are instituted for the determination of rights to water, it is the duty of all claimants interested therein and having notice thereof as provided in this chapter, to notify the board of their intention to file proof of claim and to appear and submit proof of their respective claims at the time and in the manner required by this chapter." The Report goes on to argue that if the State Water Board can require all water right claimants to meet the burden of proving up their water rights during an adjudication of an entire stream system, then there exists no policy justification to impose a lesser burden when the State Board investigates and initiates a proceeding as to individual water rights. A statutory adjudication also requires the State Water Board to give notice to all interested parties, receive claims, conduct an investigation, and hold hearings before making an order of determination. These same due process protections are not guaranteed in SB 389.



While SB 389's overarching intention is to ensure water right claimants are in fact diverting what they have the right to divert and use, it includes some troubling provisions that expand the authority of the State Water Board and subject water diverters to potentially costly and resource intensive investigations.

Pros:

- None identified.

Cons:

- Requires water rights claimants to meet a standard that is consistent with stream adjudications on individual water rights claims
- Likely to significantly increase costs for water rights holders and place additional risk on nonperfected historical rights

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## Guidelines for Taking Positions on Legislation

A number of controversial bills are introduced each year in the Congress and in the California Legislature. It is important to understand how the Authority takes positions on legislation.

### Policy

By Agenda Item 9, dated December 8, 2022, the Board adopted the Fiscal Year 2024 Objectives.

### Water Authority's Positions on Legislation

The Water Authority takes positions on legislation that, if enacted, would impact Water Authority members, consistent with Water Authority Board adopted Goals and Objectives. The Water Authority may take the following positions on legislation: Oppose, Support, Oppose Unless Amended, Support if Amended, Not Favor, Favor, Not Favor Unless Amended, Favor if Amended, and Watch (neutral). The Water Authority's staff and consultants testify and advocate with legislators and staff through meetings and member agency contacts on all positions except Watch, Favor and Not Favor. For Favor and Not Favor positions, written communication of the Water Authority's position is provided to the legislator. Nothing in this section should be read to preclude the Executive Director or his or her delegee from taking an informal support or informal oppose position on behalf of the Water Authority that is consistent with adopted legislative or policy objectives, or to preclude the Executive Director from communicating a position on emergency legislation after obtaining the concurrence of the Chair, or the Chair's designee, provided that the Executive Director informs the Board regarding such positions on emergency legislation no later than the next regularly scheduled Board meeting.

### Amendment Development Process

If the Water Authority takes an Oppose Unless Amended or Support if Amended position, the Water Authority will typically discuss the concepts for the amendments at the meeting. Then Water Authority staff, in consultation with Committee and/or Board Members as needed, will develop the amendments after the meeting.



## Information Sharing

To provide adequate information to the entire Water Authority membership, the Water Authority provides legislative updates, posts positions and other information on our website, and sends out advisories and alerts on key legislation.

The Water Authority's legislative department is available to provide specific information on bills on request and Board Members are encouraged to communicate Water Authority positions on priority legislation in meetings with legislative staff, consistent with Water Authority policy. The Water Authority's Water Policy Director appreciates being informed by Water Authority members of positions taken by Water Authority members on legislation.

# **BILL TEXT**



AMENDED IN SENATE MARCH 22, 2023

**SENATE BILL**

**No. 366**

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**Introduced by Senator Caballero**  
*(Coauthor: Assembly Member Blanca Rubio)*

February 8, 2023

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*An act to amend Section 10004.6 of, to repeal Sections 10004.5 and 10013 of, and to repeal and add Sections 10004 and 10005 of, the Water Code, relating to water.*

LEGISLATIVE COUNSEL'S DIGEST

SB 366, as amended, Caballero. The California Water Plan: long-term supply targets.

Existing law requires the Department of Water Resources to update every 5 years the plan for the orderly and coordinated control, protection, conservation, development, and use of the water resources of the state, which is known as the California Water Plan. Existing law requires the department to include a discussion of various strategies in the plan update, including, but not limited to, strategies relating to the development of new water storage facilities, water conservation, water recycling, desalination, conjunctive use, water transfers, and alternative pricing policies that may be pursued in order to meet the future needs of the state. *Existing law requires the department to establish an advisory committee to assist the department in updating the plan.*

~~This bill would make legislative findings and declarations and state the intent of the Legislature to enact future legislation that modernizes the California Water Plan, including the establishment of long-term water supply targets.~~

*This bill would require the department to instead establish a stakeholder advisory committee, to expand the membership of the*

*committee to include tribes and environmental justice interests, to prohibit a member of the committee from serving longer than the development of 2 updates, and to require the committee to meet a minimum of 4 times annually. The bill would require the department, in coordination with the California Water Commission, the State Water Resources Control Board, other state and federal agencies as appropriate, and the stakeholder advisory committee to develop a comprehensive plan for addressing the state’s water needs and meeting specified water supply targets established by the bill for purposes of “The California Water Plan.” The bill would require the plan to provide recommendations and strategies to ensure enough water supply for all beneficial uses. The bill would require the plan to include specified components, including an economic analysis and a long-term financing plan. The bill would require the department to develop the long-term financing plan, as provided, to meet the water supply targets and include the final financing plan as part of each update. The bill would require the Director of Water Resources to provide an oral and written report to the Legislature, each year by May 1, regarding the progress made toward meeting the water supply targets, as specified. The bill would also require the department to conduct public workshops to give interested parties an opportunity to comment on the plan and to post the preliminary draft of the plan on the department’s internet website. The bill would include findings and declarations relating to water supply and climate change.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *The Legislature finds and declares all of the*
- 2     *following:*
- 3     (a) *To thrive as a state, California needs a reliable supply of*
- 4     *water for urban, agricultural, and environmental uses that is*
- 5     *resilient to climate change.*
- 6     (b) *California’s existing water usage is highly reliant on*
- 7     *capturing the snow melt on an annual basis. That water is stored*
- 8     *in lakes, reservoirs, and groundwater basins and is then*
- 9     *transported around the state for environmental, residential,*
- 10    *business, and agricultural use when needed.*

1 (c) California has the most intricate and elaborate system of  
2 water conveyance in the world.

3 (d) Dependent on the extent of drought or flood conditions, the  
4 Department of Water Resources has calculated that the volume of  
5 water used by people in California for agricultural, urban, and  
6 environmental purposes ranges from 60,000,000 acre-feet per  
7 year to 90,000,000 acre-feet per year.

8 (e) Per capita water use has declined over time, thanks to a  
9 conservation ethic encouraged by water agencies and other  
10 stakeholders, water-saving indoor plumbing fixtures and  
11 appliances, better leak detection, and efforts to reduce outdoor  
12 water use.

13 (f) Water use also has significantly declined in the agricultural  
14 sector thanks to proactive steps taken by irrigation districts and  
15 farmers, such as installing drip irrigation systems.

16 (g) California is experiencing significant impacts of a changing  
17 climate on our water supply systems.

18 (h) According to the Department of Water Resources, hotter  
19 and drier weather is estimated to diminish our existing water  
20 supply even further and likely by 10 percent.

21 (i) A 10-percent loss could mean the disappearance of about  
22 6,000,000 acre-feet to 9,000,000 acre-feet of water supply.

23 (j) Many rivers, lakes, and estuaries are being impacted by  
24 declining water quality, including increases in harmful algal  
25 blooms.

26 (k) The California central valley has a groundwater overdraft  
27 of 2,000,000 to 3,000,000 acre-feet of water.

28 (l) Following more than two decades of “megadrought” in the  
29 Colorado Basin, reservoir levels are so low that supply cuts are  
30 likely.

31 (m) California’s precipitation is changing from seasonal snow  
32 in the Sierra to periods of substantial rainfall, including from  
33 atmospheric rivers.

34 (n) The shift to drier dry years and wetter wet years makes it  
35 imperative that the state of California develop comprehensive wet  
36 year strategies that take full advantage of times of abundance,  
37 while also ensuring public safety from floods.

38 (o) It is imperative that California capture more water from  
39 atmospheric rivers and other storms that occur during dry years  
40 to help fill groundwater basins and surface storage.

1 (p) California is the nation's agricultural powerhouse,  
2 accounting for 12 percent of agricultural production in 2021,  
3 including more than 70 percent of the nation's fruits and nuts.

4 (q) The agricultural sector produces annual revenues of more  
5 than \$50 billion, employs more than 420,000 people, and supports  
6 large food and beverage processing industries.

7 (r) According to the Department of Water Resources, there is  
8 the potential for more than 13,000,000 acre-feet of groundwater  
9 recharge annually with more than 2,500,000 acre-feet being  
10 possible using existing infrastructure.

11 (s) The Department of Water Resources describes a statewide  
12 capacity in groundwater basins in the range of 1,000,000,000  
13 acre-feet or approximately 20 times the total surface water storage  
14 capacity statewide.

15 (t) California is the home to cutting-edge job-creating industries,  
16 such as those in Silicon Valley and southern California's biotech  
17 industry.

18 (u) Local and regional water suppliers are at the forefront of  
19 implementing projects to build resiliency, but need additional  
20 support from the state and federal governments through funding  
21 and regulatory frameworks that are adapted for the new climate  
22 reality.

23 (v) It is essential for our economy, environment, and well-being  
24 that California increases the resilience of the state's water supplies.

25 (w) Governor Gavin Newsom released "California's Water  
26 Supply Strategy: Adapting to a Hotter, Drier Future" in August  
27 2022 that began to outline strategies for increasing California's  
28 water supply and streamlining approvals, but California must  
29 make a historic change in the state's comprehensive water plan  
30 and how water is provided for environmental, residential, business,  
31 and agricultural uses.

32 *SEC. 2. Section 10004 of the Water Code is repealed.*

33 ~~10004. (a) The plan for the orderly and coordinated control,  
34 protection, conservation, development, and utilization of the water  
35 resources of the state which is set forth and described in Bulletin  
36 No. 1 of the State Water Resources Board entitled "Water  
37 Resources of California," Bulletin No. 2 of the State Water  
38 Resources Board entitled, "Water Utilization and Requirements  
39 of California," and Bulletin No. 3 of the department entitled, "The  
40 California Water Plan," with any necessary amendments,~~

1 supplements, and additions to the plan, shall be known as “The  
2 California Water Plan.”

3 (b) (1) The department shall update The California Water Plan  
4 on or before December 31, 2003, and every five years thereafter.  
5 The department shall report the amendments, supplements, and  
6 additions included in the updates of The California Water Plan,  
7 together with a summary of the department’s conclusions and  
8 recommendations, to the Legislature in the session in which the  
9 updated plan is issued.

10 (2) The department shall establish an advisory committee,  
11 comprised of representatives of agricultural and urban water  
12 suppliers, local government, business, production agriculture, and  
13 environmental interests, and other interested parties, to assist the  
14 department in the updating of The California Water Plan. The  
15 department shall consult with the advisory committee in carrying  
16 out this section. The department shall provide written notice of  
17 meetings of the advisory committee to any interested person or  
18 entity that request the notice. The meetings shall be open to the  
19 public.

20 (3) The department shall release a preliminary draft of The  
21 California Water Plan, as updated, upon request, to interested  
22 persons and entities throughout the state for their review and  
23 comments. The department shall provide these persons and entities  
24 an opportunity to present written or oral comments on the  
25 preliminary draft. The department shall consider these comments  
26 in the preparation of the final publication of The California Water  
27 Plan, as updated.

28 *SEC. 3. Section 10004 is added to the Water Code, to read:*

29 *10004. (a) The department, in coordination with the California*  
30 *Water Commission, the board, other state and federal agencies*  
31 *as appropriate, and the stakeholder advisory committee outlined*  
32 *in subparagraph (A) of paragraph (3) of subdivision (f) shall*  
33 *develop a comprehensive plan for addressing the state’s water*  
34 *needs and meeting the water supply targets in subdivision (c),*  
35 *which shall be known as “The California Water Plan.” The plan*  
36 *shall provide recommendations and strategies to ensure enough*  
37 *water supply for all beneficial uses.*

38 *(b) It is hereby declared that the people of the state have a*  
39 *primary interest in the orderly and coordinated control, protection,*  
40 *conservation, development, and utilization of the water resources*

1 of the state by all individuals and entities and that it is the policy  
2 of the state that The California Water Plan, with any necessary  
3 amendments, supplements, and additions to the plan, is accepted  
4 as the master plan that guides the orderly and coordinated control,  
5 protection, conservation, development, management, and efficient  
6 utilization of the water resources of the state.

7 (c) The department shall include in the plan a water supply  
8 planning target of 15,000,000 acre-feet of water by 2050 with an  
9 interim target of 10,000,000 acre-feet of water by 2040 to ensure  
10 water supply reliability for California's future economic and  
11 environmental sustainability. The target shall include new and  
12 expanded supplies, including from the strategies listed in  
13 subparagraph (A) of paragraph (1) of subdivision (d).

14 (d) In addition to the water supply planning targets in  
15 subdivision (c), each update of the plan shall include the following  
16 components:

17 (1) (A) A discussion of various strategies, including, but not  
18 limited to, those relating to the development of new surface and  
19 groundwater storage facilities, water conservation, water  
20 recycling, desalination, conjunctive use, improved regional and  
21 statewide conveyance, stormwater capture, and water transfers  
22 that may be pursued in order to meet the water supply targets in  
23 subdivision (c). The department shall include in the plan a  
24 discussion of the potential advantages and disadvantages of each  
25 strategy, how to maximize the strategy for long-term sustainability,  
26 how innovation and research can spur the implementation of each  
27 strategy, and an identification of all federal and state permits,  
28 approvals, or entitlements that may be required in order to  
29 implement the various components of the strategy.

30 (B) In consultation with the advisory committee outlined in  
31 subparagraph (A) of paragraph (3) of subdivision (f), the  
32 department shall develop and make recommendations for specific  
33 actions that shall be taken to streamline those permits and  
34 approvals.

35 (C) In carrying out this chapter, a public water system,  
36 irrigation district, or wastewater service provider shall not be  
37 required to implement a specific strategy or project.

38 (2) A study to support the water supply targets and to  
39 recommend programs, policies, and facilities to achieve those

1 targets with assumptions and estimates as outlined in Section  
2 10004.6.

3 (3) An economic analysis of the costs and impacts to the state  
4 if it has inadequate water supplies to meet current demand for all  
5 sectors of the economy and environment in the next 10-, 20-, and  
6 30-year scenarios. The analysis shall include a range of water  
7 supply shortfall projections and water supply shortage scenarios  
8 for urban and agricultural water suppliers using water suppliers'  
9 existing planning documents, such as water shortage contingency  
10 plans, urban water management plans, and agricultural water  
11 management plans. The analysis also shall include the impacts of  
12 possible rationing for various agricultural, industrial, commercial,  
13 and residential customer classes.

14 (4) A report on the development of regional and local water  
15 projects within each hydrologic region of the state to improve  
16 water supplies to meet municipal, agricultural, and environmental  
17 water needs and meet the water supply targets.

18 (5) A long-term financing plan as outlined in Section 10005.

19 (e) The declaration set forth in subdivision (b) does not  
20 constitute approval for the construction of specific projects or  
21 routes for transfer of water, or for financial assistance, by the state  
22 without further legislative action, nor shall the declaration be  
23 construed as a prohibition of the development of the water  
24 resources of the state by any entity.

25 (f) (1) The department shall update The California Water Plan  
26 on or before December 31, 2028, and every five years thereafter.  
27 The department shall report the amendments, supplements, and  
28 additions included in the updates of The California Water Plan,  
29 together with a summary of the department's conclusions and  
30 recommendations, to the Legislature, in compliance with Section  
31 9795 of the Government Code, in the session in which the updated  
32 plan is issued.

33 (2) The director shall provide an oral and written report to the  
34 Legislature, in accordance with Section 9795 of the Government  
35 Code, each year by May 1, regarding the progress made toward  
36 meeting the water supply targets in an informational hearing of  
37 the relevant committees. The report shall include the list of  
38 recommended actions that require legislative intervention and  
39 those that can be implemented by the department or other state



1 agencies. The written report shall be posted on the department's  
2 internet website.

3 (3) (A) The department, in consultation with the California  
4 Water Commission, shall establish a stakeholder advisory  
5 committee, comprised of representatives of agricultural and urban  
6 water suppliers, local government, business, production  
7 agriculture, tribes, environmental justice and environmental  
8 interests, and other interested parties, to provide substantive  
9 input to assist the department in updating The California Water  
10 Plan, including the financing plan outlined in Section 10005. The  
11 department shall consult with and consider recommendations from  
12 the advisory committee in carrying out this section. The department  
13 shall accept applications for the stakeholder advisory committee  
14 before each update and ensure a balanced representation of  
15 members. A member of the advisory committee shall not serve for  
16 longer than the development of two updates. The advisory  
17 committee shall meet a minimum of four times annually. The  
18 department shall provide written notice of meetings of the advisory  
19 committee to any interested person or entity that requests the  
20 notice. The meetings shall be open to the public.

21 (B) The department also shall seek out and consider all relevant  
22 information from retail and wholesale water agencies, agriculture,  
23 business, tribes, environmental and environmental justice  
24 communities, and any other communities potentially impacted by  
25 the plan and from researchers and experts on climate science,  
26 climate science solutions, water storage, water conveyance, and  
27 environmental protection.

28 (4) In preparing any update of The California Water Plan, the  
29 department shall conduct a series of public workshops to give  
30 interested parties an opportunity to comment on the plan. The  
31 department shall conduct a portion of these workshops in regions  
32 of the state that have been impacted the most by drought and other  
33 weather extremes, including, but not limited to, communities with  
34 minority populations, communities with low-income populations,  
35 or both.

36 (5) The department shall release a preliminary draft of The  
37 California Water Plan, as updated, upon request, to interested  
38 persons and entities throughout the state for their review and  
39 comments. The department shall provide these persons and entities  
40 an opportunity to present written or oral comments on the

1 preliminary draft. The department also shall post the preliminary  
2 draft on the department's internet website. The department shall  
3 consider these comments in the preparation of the final publication  
4 of The California Water Plan, as updated.

5 SEC. 4. Section 10004.5 of the Water Code is repealed.

6 ~~10004.5. As part of the requirement of the department to update  
7 The California Water Plan pursuant to subdivision (b) of Section  
8 10004, the department shall include in the plan a discussion of  
9 various strategies, including, but not limited to, those relating to  
10 the development of new water storage facilities, water conservation,  
11 water recycling, desalination, conjunctive use, and water transfers  
12 that may be pursued in order to meet the future water needs of the  
13 state. The department shall also include a discussion of the potential  
14 for alternative water pricing policies to change current and  
15 projected uses. The department shall include in the plan a  
16 discussion of the potential advantages and disadvantages of each  
17 strategy and an identification of all federal and state permits,  
18 approvals, or entitlements that are anticipated to be required in  
19 order to implement the various components of the strategy.~~

20 SEC. 5. Section 10004.6 of the Water Code is amended to read:

21 ~~10004.6. (a) As part of updating The California Water Plan  
22 every five years pursuant to subdivision (b) of Section 10004, the  
23 department shall conduct a study to determine the amount of water  
24 needed to meet the state's future needs and to recommend  
25 programs, policies, and facilities to meet those needs.~~

26 ~~(b) The department shall consult with the advisory committee  
27 established pursuant to subdivision (b) of Section 10004 in carrying  
28 out this section.~~

29 (e)

30 ~~10004.6. (a) On or before January 1, 2002, and one year prior  
31 to before issuing each successive update to The California Water  
32 Plan, the department shall release a preliminary draft of the  
33 assumptions and other estimates upon which the study will be  
34 based, to interested persons and entities throughout the state for  
35 their review and comments. The department shall provide these  
36 persons and entities an opportunity to present written or oral  
37 comments on the preliminary draft. The department shall consider  
38 these documents when adopting the final assumptions and estimates  
39 for the study. For the purpose of carrying out this subdivision, the~~

1 department shall release, at a minimum, assumptions and other  
2 estimates relating to all of the following:

3 (1) Basin hydrology, including annual rainfall, estimated  
4 unimpaired streamflow, depletions, and consumptive uses.

5 (2) Groundwater supplies, including estimates of sustainable  
6 yield, supplies necessary to recover overdraft basins, and supplies  
7 lost due to pollution and other groundwater contaminants.

8 (3) Current and projected land use patterns, including the mix  
9 of residential, commercial, industrial, agricultural, and undeveloped  
10 lands.

11 (4) Environmental water needs, including regulatory instream  
12 flow requirements, nonregulated instream uses, and water needs  
13 by wetlands, preserves, refuges, and other managed and unmanaged  
14 natural resource lands.

15 (5) Current and projected population.

16 (6) Current and projected water use for all of the following:

17 (A) Interior uses in a single-family dwelling.

18 (B) Exterior uses in a single-family dwelling.

19 (C) All uses in a multifamily dwelling.

20 (D) Commercial uses.

21 (E) Industrial uses.

22 (F) Parks and open spaces.

23 (G) Agricultural water diversion and use.

24 (7) Evapotranspiration rates for major crop types, including  
25 estimates of evaporative losses by irrigation practice and the extent  
26 to which evaporation reduces transpiration.

27 (8) Current and projected adoption of urban and agricultural  
28 conservation practices.

29 (9) Current and projected supplies of water provided by water  
30 recycling and reuse.

31 ~~(d) The department shall include a discussion of the potential~~  
32 ~~for alternative water pricing policies to change current and~~  
33 ~~projected water uses identified pursuant to paragraph (6) of~~  
34 ~~subdivision (e).~~

35 *(10) Climate change impacts by region.*

36 ~~(e) Nothing in this section requires or prohibits~~

37 *(b) This section does not require or prohibit the department*  
38 *from updating any data necessary to update The California Water*  
39 *Plan pursuant to subdivision ~~(b)~~ (f) of Section 10004.*

40 *SEC. 6. Section 10005 of the Water Code is repealed.*

1     ~~10005. (a) It is hereby declared that the people of the state~~  
2 ~~have a primary interest in the orderly and coordinated control,~~  
3 ~~protection, conservation, development, and utilization of the water~~  
4 ~~resources of the state by all individuals and entities and that it is~~  
5 ~~the policy of the state that The California Water Plan, with any~~  
6 ~~necessary amendments, supplements, and additions to the plan, is~~  
7 ~~accepted as the master plan which guides the orderly and~~  
8 ~~coordinated control, protection, conservation, development,~~  
9 ~~management and efficient utilization of the water resources of the~~  
10 ~~state.~~

11     ~~(b) The declaration set forth in subdivision (a) does not~~  
12 ~~constitute approval for the construction of specific projects or~~  
13 ~~routes for transfer of water, or for financial assistance, by the state,~~  
14 ~~without further legislative action, nor shall the declaration be~~  
15 ~~construed as a prohibition of the development of the water~~  
16 ~~resources of the state by any entity.~~

17     ~~SEC. 7. Section 10005 is added to the Water Code, to read:~~

18     ~~10005. (a) The department shall develop a long-term financing~~  
19 ~~plan to meet the water supply targets and include the final~~  
20 ~~financing plan as part of each update.~~

21     ~~(b) The financing plan shall do all of the following:~~

22     ~~(1) Analyze a variety of financing mechanisms, including use~~  
23 ~~of general fund moneys, general obligation bond fund moneys,~~  
24 ~~and other potential sources of financing to meet the water supply~~  
25 ~~targets in The California Water Plan and provide necessary~~  
26 ~~investments to ensure a water resilient state.~~

27     ~~(2) Consider the cost-effectiveness of various water supply~~  
28 ~~options and compare those costs to the economic costs of supply~~  
29 ~~shortages on various customer classes and the California economy.~~

30     ~~(3) Recommend actions to be taken by the department, the board,~~  
31 ~~or other state agencies to streamline access to funding for projects~~  
32 ~~in all areas of the state that will help achieve the water supply~~  
33 ~~targets, including a coordinated application process across state~~  
34 ~~agencies, expedited funding guidelines, and an annual report~~  
35 ~~listing projects funded by state agencies with the resulting acre-feet~~  
36 ~~produced.~~

37     ~~(c) The California Water Commission shall conduct a series of~~  
38 ~~public workshops to give interested parties an opportunity to~~  
39 ~~comment on the financing plan. The commission shall conduct a~~  
40 ~~portion of these workshops in regions of the state that have been~~

1 *impacted the most by drought or other weather extremes, including,*  
2 *but not limited to, communities with minority populations,*  
3 *communities with low-income populations, or both.*

4 *(d) The financing plan shall recognize that public water systems,*  
5 *irrigation districts, and wastewater service providers utilize*  
6 *different rate structures and avoid mandates for revising those*  
7 *rates or a specific level of investment from public water systems,*  
8 *irrigation districts, or wastewater service providers.*

9 *SEC. 8. Section 10013 of the Water Code is repealed.*

10 ~~10013. The department, as a part of the preparation of the~~  
11 ~~department's Bulletin 160-03, shall include in the California Water~~  
12 ~~Plan a report on the development of regional and local water~~  
13 ~~projects within each hydrologic region of the state, as described~~  
14 ~~in the department's Bulletin 160-98, to improve water supplies to~~  
15 ~~meet municipal, agricultural, and environmental water needs and~~  
16 ~~minimize the need to import water from other hydrologic regions.~~  
17 ~~The report shall include, but is not limited to, regional and local~~  
18 ~~water projects that use technologies for desalting brackish~~  
19 ~~groundwater and ocean water, reclaiming water for use within the~~  
20 ~~community generating the water to be reclaimed, the construction~~  
21 ~~of improved potable water treatment facilities so that water from~~  
22 ~~sources determined to be unsuitable can be used, and the~~  
23 ~~construction of dual water systems and brine lines, particularly in~~  
24 ~~connection with new developments and when replacing water~~  
25 ~~pipng in developed or redeveloped areas.~~

26 ~~SECTION 1. The Legislature finds and declares all of the~~  
27 ~~following:~~

28 ~~(a) To thrive as a state, California needs a reliable supply of~~  
29 ~~water for urban, agricultural, and environmental uses that is~~  
30 ~~completely resilient to climate change.~~

31 ~~(b) California's existing water level is highly reliant on capturing~~  
32 ~~the snow melt on an annual basis. That captured water is stored in~~  
33 ~~lakes, reservoirs, and groundwater basins, and is then transported~~  
34 ~~around the state for environmental, residential, business, and~~  
35 ~~agricultural use when needed.~~

36 ~~(c) California has the most intricate and elaborate system of~~  
37 ~~water conveyance in the world.~~

38 ~~(d) The volume of water used by people in California for~~  
39 ~~agriculture, urban, and environmental purposes ranges from~~  
40 ~~60,000,000 to 90,000,000 acre-feet per year.~~

1 ~~(e) Per-capita water use has declined over time, thanks to~~  
2 ~~water-saving indoor plumbing fixtures and appliances, better leak~~  
3 ~~detection, development of potable and nonpotable water reuse~~  
4 ~~projects, and efforts to reduce outdoor water use.~~

5 ~~(f) Over the last two years, scientists and water managers have~~  
6 ~~been alarmed by the accelerating impacts of the warming climate~~  
7 ~~on our water supply.~~

8 ~~(g) Hotter and drier weather is estimated to diminish our existing~~  
9 ~~water supply by 10 percent to 20 percent.~~

10 ~~(h) A loss of 10 percent of our existing water supply due to~~  
11 ~~hotter and drier conditions could mean the disappearance of about~~  
12 ~~6,000,000 to 9,000,000 acre-feet of water.~~

13 ~~(i) For comparison's sake, California's largest reservoir, the~~  
14 ~~Shasta Reservoir, holds 4,500,000 acre-feet of water.~~

15 ~~(j) Many rivers, lakes, and estuaries are being impacted by~~  
16 ~~declining water quality, including increases in harmful algae~~  
17 ~~blooms.~~

18 ~~(k) The California central valley has a groundwater overdraft~~  
19 ~~of 2,000,000 to 3,000,000 acre-feet of water.~~

20 ~~(l) Following more than two decades of "megadrought" in the~~  
21 ~~Colorado River Basin, reservoir levels are so low that near-term~~  
22 ~~supply cuts are likely.~~

23 ~~(m) California's precipitation is changing from seasonal snow~~  
24 ~~in the Sierra Nevada Mountains to periods of substantial rainfall,~~  
25 ~~including atmospheric rivers.~~

26 ~~(n) The shift to drier dry years and wetter wet years makes it~~  
27 ~~imperative that the State of California develop comprehensive~~  
28 ~~wet-year strategies that take full advantage of times of abundance,~~  
29 ~~while also ensuring public safety from floods.~~

30 ~~(o) It is imperative that California capture more water from~~  
31 ~~atmospheric rivers and other storms that occur during dry years to~~  
32 ~~help fill groundwater basins and surface storage.~~

33 ~~(p) California is the nation's agricultural powerhouse, accounting~~  
34 ~~for 12 percent of the nation's agricultural production in 2021,~~  
35 ~~including more than 70 percent of the nation's fruits and nuts.~~

36 ~~(q) The agriculture sector produces annual revenues of more~~  
37 ~~than \$50 billion, employs more than 420,000 people, and supports~~  
38 ~~large food and beverage processing industries.~~

39 ~~(r) According to the Department of Water Resources, there is~~  
40 ~~the potential for more than 13,000,000 acre-feet of groundwater~~

1 recharge annually, with more than 2,500,000 acre-feet being  
2 possible using existing infrastructure.

3 (s) The Department of Water Resources describes a statewide  
4 capacity in groundwater basins in the range of 1,000,000,000  
5 acre-feet or approximately 20 times the total surface water storage  
6 capacity statewide.

7 (t) California is home to cutting-edge, job-creating industries  
8 such as those in Silicon Valley and southern California's  
9 biotechnology industry.

10 (u) It is essential for our economy, environment, and well-being  
11 that California increases the resilience of the state's water supplies.

12 (v) California must make a historic change in how water is  
13 provided for environmental, residential, business, and agricultural  
14 uses.

15 SEC. 2. It is the intent of the Legislature to enact future  
16 legislation that modernizes the California Water Plan, including  
17 the establishment of long-term water supply targets.