



Express Support for SB 565 (Pavley, D-Los Angeles)

Communications and Legislation Committee

Item 8-10

July 13, 2010

BACKGROUND

- Delta Vision recommended enhancement of SWRCB accountability in administration of water rights
- Limited enforcement exists for pre-1914 or riparian water users
- Only 68% of post-1914 appropriative rights holders comply now

BACKGROUND (cont'd)

- Five bills introduced in 2009/10 legislative session to:
 - Enhance SWRCB's enforcement of existing water use requirements
 - Protect legal diversions and uses, including the environment

BACKGROUND (cont'd)

- Bills introduced (cont'd):
 - SB 681 (Pavley)/SB 229 (Pavley) preprint/SB 68 (Steinberg) conference report:
 - Gave explicit authority for SWRCB to issue interim relief orders
 - Potential shift of burden of proof
 - Authorized SWRCB-initiated stream system adjudications
 - AB 900 (DeLeon) and SBX7 8 (Steinberg):
 - Integrated into November 2009 Delta package
 - Extended water use reporting requirements to Delta diverters

SB 565 AS AMENDED 5/20

- Designed to vigorously enforce unreasonable diversion/use and reporting and monitoring requirements
- First increase in fines in nearly 20 years for:
 - Failure to comply with SWRCB orders
 - Failure to file or misstatements in diversion reports
 - Violations of monitoring/reporting requirements
 - Adds mitigating factors for violator's ability to pay, impact on ability to continue business and penalties for small farms for de minimus violations

SB 565 AS AMENDED 5/20 (cont'd)

- Adds rebuttable presumption of non-use of water
 - Can be rebutted by evidence of actual use
 - Can be cured by filing diversion statement within six months
- SWRCB can order technical or monitoring reports but only after hearing; costs must bear reasonable relationship to need/benefit
- Authorizes SWRCB to inspect facilities only with landowner's consent or under duly issued warrant

SUPPORT

- What are supporters saying?
 - Gives SWRCB tools to eliminate illegal diversions
 - Low penalties may incentivize illegal behavior
 - Riparians and pre-1914 water users not paying fair share of monitoring and enforcement costs
- Includes CLCV, East Bay MUD, EDF, NRDC, PCL, Sierra Club, among others

OPPOSITION

- What are opponents saying?
 - Adds “sweeping” authority to inspect private property
 - Requires “expensive” engineering reports and technical monitoring
 - Leads to excessive and inappropriately calculated fines
 - Potential loss of water rights for failure to pay fees
 - Fines would fund restoration projects and conservancies
- Includes ACWA, CBIA, California Chamber, California Farm Bureau, CMUA, IID, KCWA, NCWA, Western Growers, among others

COMMITTEE AMENDMENTS

ADOPTED JUNE 29

- Assembly water committee amendments (not reflected in BL 8-10):
 - Limits SWRCB authority to order new monitoring/technical reports to diversions more than 200 a/f/y
 - Authorizes SWRCB to revise order if material financial hardship demonstrated
 - Smaller diverters only required to submit reports already in possession or control

COMMITTEE AMENDMENTS ADOPTED JUNE 29 (cont'd)

- Property inspections may be conducted only with landowner's consent or under duly obtained warrant
- Penalties based on market value of water only applies to repeat enforcement actions or unauthorized diversions which equal or exceed 1,000 AF or more on any given day

COMMITTEE AMENDMENTS ADOPTED JUNE 29 (cont'd)

- Eliminates use of fines for funding restoration projects and conservancies
- Clarifies diversion statement filed but canceled for nonpayment of fee does not trigger rebuttable presumption of nonuse

BENEFITS OF SB 565

- Consistent with Delta Vision recommendations regarding administration of water rights
- Advances co-equal goals in Delta Package
- Protects legal diversions of water from interference by illegal and unreasonable uses

BENEFITS OF SB 565 (cont'd)

- Provides strong incentives for all diverters/users of water from Delta and watershed to comply with reasonable use, reporting and monitoring requirements
- Ensures all water diverters/users having impact on Delta and watershed comply with reasonable use and public trust requirements

Staff recommendation:

- Option 1
 - Adopt CEQA determination and express support for SB 565