



Santa Clara Valley Water District

File No.: 24-0619

Agenda Date: 6/25/2024

Item No.: *4.4

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes No
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Adopt Recommended Positions on State Legislation: AB 460 (Bauer-Kahan) Civil Penalties for Water Rights Violations, *AB 1581 (Kalra & Mathis) Restoration Management Permit Act, AB 1785 (Pacheco) California Public Records Act, *AB 2655 (Berman & Pellerin) Defending Democracy from Deepfake Deception Act, and Other Legislation Which May Require Urgent Consideration for a Position by the Board.

RECOMMENDATION:

- A. Adopt a position of "Support" on: AB 460 (Bauer-Kahan) Civil Penalties for Water Rights Violations; and
- B. *Adopt a position of "Support" on: AB 1581 (Kalra & Mathis) Restoration Management Permit Act;
- C. Adopt a position of "Support" on: AB 1785 (Pacheco) California Public Records Act; and
- D. *Adopt a position of "Support" on: AB 2655 (Berman & Pellerin) Defending Democracy from Deepfake Deception Act.

SUMMARY:

AB 460 (Bauer-Kahan) Civil Penalties for Water Rights Violations (Amended-06/10/24)

Position Recommendation: Support

Priority Recommendation: 3

AB 460 would increase the penalties for violations of cease-and-desist orders and curtailment orders issued by the State Water Resources Control Board (State Water Board). The State Water Board allocates water rights, adjudicates water right disputes, develops statewide water protection plans, establishes water quality standards, and manages the nine Regional Water Quality Control Boards. Existing law authorizes the executive director of the State Water Board to issue a complaint to any person that diverts water in violation of a water right, does not comply with a cease-and-desist order, or makes a willful misstatement on certain water diversion and use statements required by the State Water Board.

In August 2021, the State Water Board adopted emergency regulations and shortly thereafter issued

curtailment orders to establish minimum instream flows to protect Chinook salmon, coho salmon, and steelhead trout in the Scott and Shasta River watersheds. The Shasta River Water Association (SRWA), a water diverter with senior water rights, diverted water in violation of a curtailment order and press reports indicate the river's flow dropped by more than half during the diversion. The State Water Board issued a notice and draft cease-and-desist order giving SRWA 20 days to request a hearing. Eight days after the notice was issued, SRWA ceased its illegal diversion and no hearing occurred. The State Water Board imposed the maximum penalty of \$4,000 (\$500 per day for eight days). It appears that SRWA viewed paying the maximum allowable fine was simply a cost of doing business.

Beginning January 1, 2025, AB 460 would require the State Water Board to annually adjust for inflation any civil and administrative liabilities or penalties related to water rights administration imposed by the State Water Board. The bill also would increase the penalties for violation of a cease-and-desist order (from \$1,000 to \$2,500 per day) and increase the penalties for violation of a permit term, license, certification, registration, order, regulation, or reporting requirement (from a maximum of \$500 to \$1,000 per day). Additionally, in the case of a diversion of water contrary to a curtailment order, the State Water Board would be authorized to issue a penalty for an additional \$10,000 for each day the violation occurs, and \$2,500 for each acre-foot of water diverted in violation of the curtailment order.

Importance to Santa Clara Valley Water District (Valley Water)

Valley Water is supplied imported water by the State Water Project and the federal Central Valley Project, and both systems are downstream diverters of water. Together the state and federal water projects supply about 40 percent of the water used in Santa Clara County. If upstream diverters, typically those with senior water rights, divert water during drought in violation of curtailment orders, it is possible that water supplies for critical human health and safety would not be available when needed. The people of Santa Clara County depend on the enforcement of California's water rights system by the State Water Board to ensure the availability of water through the state and federal water projects. AB 460, by increasing penalties for violation of water rights law and regulation, helps protect downstream diverters and the people who depend on them as well as the environment.

Staff recommends a position of "Support" on AB 460.

Pros

- Ensures compliance with water rights law and regulation.
- Protects the people who depend on downstream diversions, especially during drought or periods of water shortage.

Cons

- Valley Water also must comply with water rights law and regulation, and in the event of a violation, Valley Water would be subject to increased penalties.

***AB 1581 (Kalra & Mathis) Restoration Management Permit Act (Amended-06/0/24)**

Position Recommendation: Support
Priority Recommendation: 2

Existing law, the Lake and Streambed Alteration Program, prohibits entities from diverting or obstructing the natural flow of, or substantially altering or using any material from the bed, channel or bank of any river, stream, or lake, or from depositing material where it can pass into a river, stream, or lake, unless a Lake and Streambed Alteration Agreement (LSAA) permit is authorized. Existing law, the California Endangered Species Act (CESA), also prohibits the take or possession of any protected species, without proper authorization.

AB 1581 Restoration Management Permit Act would streamline the permitting process for environmental restoration projects in California, to support the 30x30 goal of conserving 30% of California's lands and coastal waters by 2030. Qualifying restoration projects would primarily focus on restoring native fish, wildlife, plants, or habitat, and may also have benefits to flood risk reduction, recreation, and groundwater recharge.

This bill would create a unified permitting mechanism through the Department of Fish and Wildlife (CDFW), allowing the department to issue a Restoration Management Permit to for qualifying restoration or management projects instead of a Lake and Streambed Alteration Permit, and would replace incidental take permits under CESA. AB 1581 also authorizes CDFW to develop guidelines for Restoration Management Permits and establishes a dedicated fund for collection of fees under the permit program.

Importance to Valley Water

Currently, restoration projects require up to five separate permits from the CDFW. The permitting process is currently affected by departments' lack of resources and staffing issues, causing long delays in issuing permits needed for project implementation. The timely implementation and effectiveness of restoration projects that mitigate the effects of climate change on the environment depend on the speed of the permit approval process. AB 1581 would facilitate implementation of projects that restore and enhance native ecosystems by creating a single permit, addressing the urgent need for habitat restoration in response to the increasingly frequent effects of climate change and biodiversity loss.

AB 1581 would reduce the complexity and costs associated with obtaining multiple permits for restoration activities and would reduce permitting delays that lead to cost increases for larger projects. Valley Water restoration projects, which are frequently subject to CDFW permitting, would benefit from only having to apply for one blanket Restoration Management Permit. For example, the South San Francisco Bay Shoreline Project, aims to address both flood protection and tidal marsh restoration, is subject to CDFW permitting and may benefit from the creation of a new permit to condense the timeline needed for approvals.

Staff recommends a position of "Support" on AB 1581.

Pros

- Expedites the permitting process for restoration projects by creating a single permit to

authorize streambed alterations and the incidental take of protected species.

Cons

- Does not address issues with current permits, simply creates an alternate permitting pathway for restoration management projects.

AB 1785 (Pacheco) California Public Records Act (Amended-05/29/24)

Position Recommendation: Support

Priority Recommendation:2

The California Public Records Act (PRA) prohibits a state or local agency from posting the home address or telephone number of any elected or appointed official on the internet without first obtaining the written permission of that individual.

AB 1785 would expand these provisions by prohibiting a state or local agency from publicly posting online the name and assessor parcel number associated with the home address of any elected or appointed official without written permission of that individual. The bill also defines “publicly post” as to intentionally communicate or make available the information on the internet in an unrestricted and publicly available manner.

Importance to Valley Water

While the PRA prohibits a local agency from publicly posting the home address of an elected or appointed official, it is relatively simple to obtain a property owner’s address through publicly available assessor parcel numbers on a county recorder’s website. As threats of violence against elected and appointed officials increase, this bill aims to protect the safety of elected and appointed officials by maintaining the privacy of their home address.

Currently, only Santa Clara and Los Angeles Counties do not post elected or appointed officials’ assessor parcel number information on county recorder or assessor websites. AB 1785 would ensure that all county agencies or departments do not post an elected or appointed official’s name and home assessor parcel number information, thereby closing a loophole that allows individuals to use assessor parcel numbers to obtain an official’s home address.

Staff recommends a position of “Support” on AB 1785.

Pros

- Further ensures that elected or appointed officials’ home addresses are kept private unless consent is given.
- Protects the safety of elected and appointed officials and their families.

Cons

- None identified.

***AB 2655 (Berman and Pellerin) Defending Democracy from Deepfake Deception Act of 2024 (Amended-06/11/24)**

Position Recommendation: Support

Priority Recommendation: 3

AB 2655 would require large online platforms with at least one million California users to block the posting or spread of elections-related content that is deemed materially deceptive because it is digitally modified or created to falsely appear to be an authentic record of the content depicted. Under the bill, candidates would be allowed to digitally create and modify content portraying themselves as doing or saying something that the candidate did not, but must label it with a disclosure stating, *“This image/audio/video has been manipulated.”*

This bill further would require large online platforms to detect digitally modified or created content, to develop procedures for blocking and preventing the posting or spreading of materially deceptive and digitally modified or created content, and to block and prevent that content if the platform knows or should know that the content meets specified requirements. All of AB 2655 provisions would apply only during a period beginning 120 days before the election and ending on the 60th day after the election.

The bill is intended ensure that online platforms restrict the spread of election-related deceptive deepfakes meant to prevent voters from voting or to deceive them based on fraudulent content. Deepfakes are a powerful tool in the arsenal of those that want to wage disinformation campaigns, and they have the potential to undermine democracy by attributing speech and conduct to a person that is false or that never happened.

Importance to Valley Water

Valley Water’s Board Directors are elected by the voters of Santa Clara County. Protecting the integrity of the elections that empower the Board Directors is critically important to the effective functioning of the agency in a manner that reflects community values. Advances in Artificial Intelligence (AI) make it easy for practically anyone to generate false and misleading content that closely resembles authentic content, making it important to identify and restrict deepfakes before they have the chance to deceive voters. The growth of social media platforms has facilitated the rapid, low-cost dissemination of deceptive media to large audiences. The power of AI paired with social media poses a large and growing threat through digitally manipulated, easily distributed media that may distort future elections.

AB 2655 aims to address this risk and protect free speech with thoughtful limits that are “narrowly tailored to serve an overriding state interest,” as required by federal case law in *McIntyre v. Ohio Elections Commission* (1995), 514 US 334. This bill narrowly targets deceptive content that could undermine the public’s trust in elections, discourage voter turnout, and distort election outcomes. It exempts content that is clearly comic parody, or that

is outside of the months just before and just after an election. The overriding state interest here is in the free and fair function of the electoral process.

Staff recommends a position of “Support” on AB 2655.

Pros

- Would restrict the spread of election-related deceptive deepfakes meant to prevent voters from voting or to deceive them based on fraudulent content.
- The bill’s provisions are limited to addressing concerns about restrictions on the freedom of speech.

Cons

- There is no guarantee a large online platform will definitively know if a piece of content has been manipulated so deepfake content may still be rapidly disseminated.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:

There are no Environmental Justice impacts associated with this item. The Board’s position does not enact the legislation discussed above. If the enactment of state legislation necessitates an action by the Board, any associated Environmental Justice impacts will be assessed when the Board considers the action.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

- *Original Board Agenda Memo
- *Supplemental Board Agenda Memo

UNCLASSIFIED MANAGER:

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