June 20, 2023

Assemblymember Rebecca Bauer-Kahan

Chair of Assembly Water Parks and Wildlife Committee

State Capitol

Sacramento, CA 95814

**Subject: Assembly Bill 460 State Water Resources Control Board: water rights and usage:**

**interim relief: procedures.**

Assemblymember Bauer-Kahan,

The Siskiyou County Board of Supervisors is writing to respectfully oppose AB 460 as introduced and subsequently amended. AB 460, as currently written, provides expansive new authority to the State Water Resources Control Board (State Board). We agree that illegal diversion and use of water is a serious issue, however, AB 460 goes well beyond what is needed for the State Board to control such illegal actions. Our primary and specific concerns with AB 460 are well articulated in the April 11, 2023 letter from a large group of organizations, including the California Farm Bureau, Association of California Water Agencies, the Northern California Water Association, and many irrigation districts, associations and agencies.

In regards to Interim relief the April 11, 2023, letter states that “[T]his bill encompasses far more than alleged illegal diversions of surface water or violations of State Water Board orders. First, the bill proposes to authorize interim relief order and limit judicial review of numerous constitutional, statutory and common law doctrines that, by definition, require robust evidentiary records and full judicial review. For example, in addition to the Reasonable Use and Public Trust Doctrines, AB 460 would authorize interim relief in actions concerning standards promulgated under the state’s comprehensive water quality law (Porter-Cologne)”. As part of Porter-Cologne, Water Code sections 13241 (which governs obligations to set water quality objectives) are already subject to a different set of mechanisms for enforcement and interim relief. In this regard, AB 460 would serve to create a different, duplicative procedure for parties to seek State Board investigation of water quality-related orders and discharges to water, which is wholly unnecessary.

In regards to plenary discretion given to the State Board, we agree with the authors of the April 11th letter that details concerns that “this bill conflicts with the California Administrative Procedures Act, including the Administrative Bill of Rights, because the bill provides significant discretion to the State Water Board in pursuing and issuing interim relief orders, particularly in the event that the relief is initiated by the State Water Board itself. For instance, the bill outlines the requirements that an interested party must meet if it petitions for an interim relief order, but the same does not appear to apply to an own-motion process initiated by the State Water Board.”

Just as concerning, if not more so, is the AB 460’s authorization to allow the State Board to immediately issue an interim relief order before holding a hearing if the Water Board makes certain findings. The State Board currently has the authority to act in a timely manner to address these types of issues, specifically those related to curtailment orders. Water Code section 1052 allows the State Board to go to court to obtain a temporary restraining order to stop diversions that are impacting fish and wildlife. The new language in AB 460 removes procedural protections that should be afforded to all property rights.

Lastly, water rights are property rights, and therefore are subject to due process of law. As currently written, AB 460 would eliminate this due process of law in cases where the State Board makes certain findings. In this situation, the State Board would not be required to provide a minimum of 10 days’ notice before a hearing to consider interim relief and instead allows the State Board to issue interim relief without notification or opportunity to be heard until after the fact. This immediate issuance can also be in place for 180 days, meaning that an entire irrigation season could pass by without an irrigator’s ability to defend themselves. This provision of AB 460 provides new and broad authorities to the State Board while also weakening long-standing standards of review.

For the reasons above, Siskiyou County opposes AB 460.

Sincerely,

Ed Valenzuela

Chair, Board of Supervisors

cc: Assemblywoman Megan Dahle

Senator Brian Dahle

Rural County Representative of California (RCRC)

California State Association of Counties (CSAC)

Shaw Yoder Antwih Schmelzer & Lange