



1231 Eleventh Street  
P.O. Box 4060  
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(209) 526-7373

March 21, 2023

The Honorable Bauer-Kahan  
Chairwoman, Assembly Water, Parks, & Wildlife Committee  
1021 O St, Suite 6320  
Sacramento, CA 95814

**RE: AB 460 - State Water Resources Control Board: interim relief – OPPOSE**

Dear Chairwoman Bauer-Kahan,

On behalf of the Modesto Irrigation District (MID), we write in respectful opposition to AB 460 (Bauer-Kahan). This bill would provide the State Water Resources Control Board (State Water Board) with expansive authority to issue interim relief orders on exceedingly short notice and with nearly unbound discretion. The bill would also provide that a person or entity that violates any interim relief order issued by the State Water Board would be liable for civil penalties not to exceed the sum of \$10,000 for each day in which a violation occurs, and \$5,000 for each acre-foot of water diverted in violation of the interim relief order.

MID agrees that fines for illegal diversions should be raised to levels that are commensurate with the magnitude of the violation. However, we cannot support the unprecedented and unjustified expansion of State Water Board authority to determine, in its sole discretion, how, when, and against whom to apply and enforce the waste and unreasonable use doctrine, the public trust doctrine, and provisions of the Fish and Game Code. The legislation provides no guidance as to the evidence needed to support alleged violations of these doctrines and statutes, would bring to light conflicts between the State Water Board's quasi-judicial and quasi-legislative roles, and enable the State Water Board to issue interim relief for up to 6 months without any due process.

Moreover, this legislation, which would make the State Water Board the judge, jury, and enforcer for purposes of granting interim relief, is unnecessary. The State Water Board already has the ability to seek interim relief via temporary restraining order and preliminary injunction issued by the relevant court. Such relief can be sought and granted on an emergency basis, requiring only 24 hours' notice. The State Water Board can thus act quickly to address emergency conditions without the need to limit or circumvent fundamental protections of due process.



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Beginning in 1893, MID has provided surface water from the Tuolumne River to one of the most productive regions of the Central Valley in accordance with several pre-1914 and post-1914 water rights. Currently, we provide irrigation water to more than 3,000 accounts within a 160 square-mile irrigation service area that encompasses approximately 60,000 acres of farmland. Since 1994, MID has delivered approximately 844,000 acre-feet of high-quality treated surface water to the City of Modesto whereby significantly reducing the City's once sole reliance on groundwater from the Modesto Sub-basin.

If enacted, AB 460 would allow at any moment, and on extremely short notice, the State Water Board to issue an interim relief order effectively commandeering an agency's reservoir and/or curtailing its diversions. The costs to defend against alleged violations under an interim relief order would be overly burdensome, particularly when added to the proposed fines and penalties.

For these reasons, Modesto Irrigation District must oppose AB 460. Should you have any questions regarding these comments, please contact District staff: Dana Ferreira, Regulatory Analyst at [dana.ferreira@mid.org](mailto:dana.ferreira@mid.org)

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ed Franciosa', is written over a light blue background.

Ed Franciosa, P.E.  
General Manager

CC: Members, Assembly Water, Parks & Wildlife Committee  
Chair & Members, Assembly Judiciary Committee  
The Gualco Group, Inc.