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AB-460 State Water Resources Control Board: water rights and usage: civil penalties. (2023-2024)

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Assembly Bill No. 460

CHAPTER 342

An act to amend Sections 1845 and 1846 of, and to add Section 1055.5 to, the Water Code, relating to water.

[Approved by Governor September 22, 2024. Filed with Secretary of State September 22, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 460, Bauer-Kahan. State Water Resources Control Board: water rights and usage: civil penalties.

(1) Under existing law, the diversion or use of water other than as authorized by specified provisions of law is a trespass, subject to specified civil liability.

This bill would require the State Water Resources Control Board to adjust for inflation, by January 1 of each year, beginning in 2026, the amounts of civil and administrative liabilities or penalties imposed by the board or in water right actions brought at the request of the board, as specified.

(2) Existing law authorizes the board to issue an order to a person to cease and desist from violating, or threatening to violate, certain requirements relating to water use, including diverting or using water, other than as authorized. Upon the failure of any person to comply with a cease and desist order issued by the board, existing law authorizes the Attorney General, upon the request of the board, to petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, and authorizes civil penalties for a violation of a cease and desist order, as specified.

This bill would increase one of the specified civil penalties to \$2,500 for each day in which a violation of a cease and desist order occurs.

(3) Existing law authorizes a person or entity in violation of a term or condition of a permit, license, certificate, or registration issued by the board, an order or regulation adopted by the board, or a condition or reporting requirement for the diversion of floodwaters for groundwater recharge to be held civilly liable for an amount not to exceed \$500 for each day in which the violation occurs.

This bill would increase the amount of civil liability for the above-described violations to \$1,000 for each day in which the violation occurs. The bill, if the violation is of a regulation or order adopted by the board that constitutes the diversion of water contrary to a curtailment order adopted by the board, would provide that a person or entity may be liable in an amount not to exceed \$10,000 for each day in which the violation occurs, and \$2,500 for each acre-foot of water diverted in violation of the curtailment order, beginning on the first day on which the violation occurs.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1055.5 is added to the Water Code, to read:

1055.5. (a) (1) The board shall adjust on an annual basis, by January 1 of each year beginning in 2026, all civil and administrative liabilities or penalties imposed by the board or in an action brought at the request of the board pursuant to this division, to adjust the maximum amounts specified in this division for inflation, as established by the amount by which the California Consumer Price Index for the month of June of the year prior to the adjustment exceeds the California Consumer Price Index for June of the calendar year in which legislation was last enacted establishing or amending the maximum amount of the liability or penalty.

(2) The amount of any liability or penalty determined pursuant to this subdivision shall be rounded as follows:

(A) To the nearest multiple of ten dollars (\$10) in the case of a liability or penalty that is less than or equal to one hundred dollars (\$100).

(B) To the nearest multiple of one hundred dollars (\$100) in the case of a liability or penalty that is greater than one hundred dollars (\$100), but less than or equal to one thousand dollars (\$1,000).

(C) To the nearest multiple of one thousand dollars (\$1,000) in the case of a liability or penalty that is greater than one thousand dollars (\$1,000), but less than or equal to ten thousand dollars (\$10,000).

(D) To the nearest multiple of five thousand dollars (\$5,000) in the case of a liability or penalty that is greater than ten thousand dollars (\$10,000).

(3) Inflation adjustments made pursuant to this subdivision are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The updated civil and administrative liability or penalties pursuant to the inflation adjustment shall be filed with the Secretary of State and published in the California Code of Regulations.

(b) This section does not apply to any liability imposed under Section 1538.

(c) The board shall report to the Legislature, in accordance with Section 9795 of the Government Code, with regard to the implementation of this section.

SEC. 2. Section 1845 of the Water Code is amended to read:

1845. (a) Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.

(b) (1) A person or entity who violates a cease and desist order issued pursuant to this chapter may be liable in an amount not to exceed the following:

(A) If the violation occurs in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions, ten thousand dollars (\$10,000) for each day in which the violation occurs.

(B) If the violation is not described by subparagraph (A), two thousand five hundred dollars (\$2,500) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.

(3) Civil liability may be imposed administratively by the board pursuant to Section 1055.

SEC. 3. Section 1846 of the Water Code is amended to read:

1846. (a) A person or entity may be liable for a violation of any of the following in an amount not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs:

(1) A term or condition of a permit, license, certificate, or registration issued under this division.

(2) A regulation or order adopted by the board.

(3) A condition or reporting requirement for the diversion of floodwaters for groundwater recharge under Section 1242.1.

(b) For a violation described in paragraph (2) of subdivision (a) that constitutes the diversion of water contrary to a curtailment order adopted by the board, a person or entity may be liable in an amount not to exceed the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted in violation of the curtailment order, beginning on the first day on which the violation occurs.

(c) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.

(d) Civil liability may be imposed administratively by the board pursuant to Section 1055.