

Agricultural Council of California
Association of California Water Agencies
California Association of Nurseries and Garden Centers
California Association of Wheat Growers
California Bean Shippers Association
California Building Industry Association
California Cattlemen's Association
California Chamber of Commerce
California Citrus Mutual
California Cotton Growers and Ginners Associations
California Farm Bureau Federation
California Grain and Feed
California Grape and Tree Fruit League
California Pear Growers
California Rice Industry Association
California Seed Association
California State Flower Association
California Tomato Growers Association
California Warehouse Association
Desert Water Agency

East Valley Water District
El Dorado irrigation District
Friant Water Authority
Glenn Colusa Irrigation District
Imperial Irrigation District
Kern County Water Agency
Kings River Conservation District
Kings River Water Association
Modesto Irrigation District
Nisei Farmers League
Northern California Water Association
Pacific Egg and Poultry Association
Pacific Gas and Electric Company
Sacramento Regional Water Alliance
Solano County Water Agency
Valley Ag Water Coalition
Western Agricultural Processors Association
Western Growers
Western Pistachio Association
Wine Institute

June 17, 2010

Assembly Member Jared Huffman
California State Assembly
State Capitol, Room 3120
Sacramento, CA 95814

**RE: SB 565 (Pavley) Water Resources – OPPOSE
Assembly Water, Parks and Wildlife Committee**

Dear Assembly Member Huffman:

The above listed entities are opposed to SB 565 (Pavley) which would establish several new penalty and investigative powers at the State Water Resources Control Board dealing with water rights, while reducing or eliminating existing due process and property rights protections for California water rights holders.

During the successfully completed historic Seventh Special Session of the 2009-2010 Legislative Session, the legislature adopted a series of significant water reforms which focused on improving the sustainability and reliability of California's water supply and environment. Many thought it went too far, others thought it didn't go far enough, but compromise prevailed.

Many of the provisions in SB 565 had been considered for inclusion in SBx7 5 (Steinberg/Pavley), SB 681(Pavley) and SB 229 (Pavley), all failed passage due to much controversy and widespread opposition. We believe the proposed legislation is counterproductive in light of the negotiations that took place during last year's water package. In contrast, SBx7 8 (Steinberg), enacted last year, represents the agreement reached by the Legislature and stakeholders that included 25 py's for new water rights enforcement staff.

We have several specific concerns with SB 565. Most significantly, Section 3 of the bill would add a new Section 1051.1 to the Water Code that gives the State Water Resources Control Board (SWRCB) sweeping authority to inspect private property for vaguely defined purposes and without clear boundaries and require water users to perform expensive engineering reports and technical monitoring studies at their own expense that will ultimately be used against those property owners by third party litigants. Indeed, the SWRCB could potentially launch a statewide or stream system by

stream system investigation into illegal diversions, under which every diverter could be required to engage in monitoring or other technical study-- for example, a massive, multi-year fish study. This authority is not limited to obtaining reports that a party already is required to prepare (or has prepared, even if not required to).

In addition to imposing significant costs on water users, these studies could result in a reduction of water use and jeopardize water rights. For example, the SWRCB could require water users to perform and fund fishery studies in consultation with the Department of Fish and Game that ultimately serve as a basis for increased minimum flow requirements that abrogate long-established water rights or bear a portion of the cost of other users' reports that are not related to their specific diversion

We are also concerned with Section 5 of the bill, which would add a new Section 1052.5 to the Water code requiring the SWRCB to consider the price of water transferred within the watershed in establishing the "highest market value of water" for purposes of setting a civil penalty for trespass and failure to comply with a cease and desist order. The calculation of the "highest market value of water", accomplished through an analysis of water transfers within undefined watersheds, where transfers may not even exist in sufficient numbers to provide any useful market-price information, will result in costly litigation and reduce the likelihood of reaching reasonable settlements in enforcement proceedings. We are equally concerned with Section 6 as it reduces existing due process protections for California citizens and property owners by eliminating the requirement for a preliminary hearing in front of the Board on a civil penalty action.

The measure would amend Section 1525 (c) of the Water Code to authorize the SWRCB to recover its costs associated with "enforcing Section 275" of the Water Code, which relates to the prevention of unreasonable use of water. While we would not oppose the SWRCB recovering its costs from a water user whose use has been found to be unreasonable, we do object to authorizing the SWRCB to recover costs incurred in processing a complaint that doesn't lead to a successful enforcement action, or spreading the costs of a successful enforcement action across all water users.

Section 13 of the bill grants power to the Board to 'cancel' water use report for failure to pay a fee, without providing an opportunity for the water use to pay the fee or reinstate the reports. Further, Section 23 of the bill shifts the burden of proving forfeiture of a water right to the water right holder, thus dramatically increasing the likelihood of a frivolous lawsuit being filed by a third party.

Finally, current law requires all water diverters (with few exceptions) to file a statement of diversion and use with the SWRCB that includes specific information, including monthly records of water diversions. SB 565 would require the payment of an undefined fee for filing the statement of diversion and use on all water users. The imposition of fees for the filing of a statement of water diversion and use is inappropriate since, unlike the filing of an application or petition, for example, which require review, analysis, monitoring or other action by the SWRCB, the filing of a statement of water diversion and use imposes no substantive burden on the SWRCB. Consequently, the imposition of fees for such filings is not justified. To the extent a fee is deemed necessary for some reason, it should be expressly limited to recover the de minimis administrative costs placed on the SWRCB and in no case should it exceed \$100. Moreover, fees, as a general matter, should not be reallocated to restoration projects and conservancies, as would be authorized by Section 15 of the bill (adding a new Section 1550(b) to the Water Code). Shifting water right fees to fund water restoration projects or conservancies would be inappropriate policy and could make those fees illegal taxes.

For these reasons, we ask that you oppose SB 565.

Cc: Senator Fran Pavley
Assembly Water, Parks and Wildlife Committee Chair and Members
Tina Cannon Leahy, Consultant to the Assembly Water, Parks & Wildlife Committee
Doug Haaland, Assembly Republican Caucus