1. **Taking points on AB 460**

* *For those who are hearing opposition from ACWA, NCWA and Big Water:* 
  + AB 460 is designed to protect farmers, ranchers, disadvantaged communities and fish populations from bad actors who try to take advantage of the previously lax water rights enforcement process at the State Water Resources Control Board. By only targeting violating existing law, this bill makes sure that those with water rights do not get taken advantage of by those trying to game the system.
  + Water Rights in California is a contentious subject, but this year in California has proven that the third rail of California water politics is being taken seriously by the legislature. In a water rights hearing held in the Assembly, we heard from academics, water law practitioners, and water rights holders who all agreed that the current water rights enforcement system doesn’t meet the needs of fish, farms, or people.
  + No system designed in the nineteenth century is perfect, so we are excited to work with our partners who value a pragmatic look at tweaking a regulatory system to balance the needs of fish, water and people and to ensure fair and equitable administration of water rights from ridgetop to river mouth.
  + From NCWA’s annual Meeting:
    - *NCWA is helping to modernize all aspects of water management in our region. I continually hear from people who travel to various conferences in different parts of the world that the Sacramento Valley is on the cutting edge of modern water management and we are truly one of the few places in the world where we work so hard to manage water for multiple benefits. Yes, modernization is a continuous process and we have more work ahead, particularly knowing the weather whiplash and challenges we have seen over the past decade.*
    - [*https://norcalwater.org/2023/03/15/water-is-life-exploring-modern-water-management-from-ridgetop-to-river-mouth-in-the-sacramento-valley/*](https://norcalwater.org/2023/03/15/water-is-life-exploring-modern-water-management-from-ridgetop-to-river-mouth-in-the-sacramento-valley/)
* *For potential support from Conservation Organizations and Fish Advocates:*
  + AB 460 empowers the State Water Board to act swiftly to prevent harm to the environment, public health, and water resources caused by illegal or wasteful uses of water. The bill grants the Board the authority to issue an interim relief order(read immediate legal action) to halt harmful water use practices that violate the Constitution, water quality objectives, and water right laws. Our primary focus of this bill is to prevent illegal water diversions during curtailment actions, especially in light of the intentional violations in the Shasta River where the offending persons said that the fines we’re a “cost of doing business.”
* *For Environmental Justice and Clean Drinking Water Advocates:*
  + AB 460 AB 460 empowers the State Water Board to act swiftly to prevent harm to the environment, public health, and water resources caused by illegal or wasteful uses of water. The bill grants the Board the authority to issue an interim relief order (“read immediate legal action”) to halt harmful water use practices that violate the Constitution, water quality objectives, water right permits and licenses, and the human right to water. AB 460 is a small fix that starts the conversation to address the inequities in the water law in California and will protect disadvantaged communities and tribal nations from illegal diversions of water.
  + LA Times Article:
    - https://www.latimes.com/environment/story/2023-03-06/is-californias-antiquated-water-rights-system-racist

1. **Responses to frequently asked Questions:**

* **AB 460 is an overly broad response to the Shasta Curtailment:**
  + AB 460 is tailored to give the SWRCB the authority to curb illegal water rights violations, like those seen in the Shasta Curtailment violations, and immediately halt illegal diversions that reduced flows drastically in the Shasta River. They cannot halt the activity until the action has already caused immediate harm to the fishery and the river.
  + AB 460 does not impose additional requirements for water users that are adhering to existing law. It only affects those that violate existing law.
* **AB 460 does not give the water divertor sufficient notice before interim relief is offered under AB 460**
  + Every water rights holder has a duty to follow their water rights. For illegal water rights violations that do not immediately harm waterways and downstream users, the SWRCB is instructed to provide notice to water rights holders in lieu of immediate interim relief. AB 460 simply gives the SWRCB the authority to immediately halt harmful actions.
* **AB 460 will have “unintended consequences” on water quality**
  + AB 460 gives the SWRCB the authority to deter and stop harmful violations of existing law. This bill only affects those breaking existing water laws in California. The onus to follow existing requirements under water users water laws has always fallen on the water user.
* **AB 460 violated due process of water users:**
  + AB 460 gives the SWRCB the authority to halt illegal activity only if the board finds that “that immediate compliance is necessary to prevent imminent or irreparable injury to other legal users of water, or to instream beneficial uses.” This is based on the ability for a court to issue a preliminary injunction and will only be used when a harm is imminent or irreparable and the board has overwhelming evidence that the violation is occurring.
  + The vast majority of other violations will not be granted interim relief, but instead undergo a hearing process similar to that already under law. In all cases, the water rights violator will have the chance to appeal to the SWRCB and the court system which has concurrent jurisdiction with the SWRCB.
* **AB 460 Incentivizes Third Party Complaints:**
  + AB 460 does allow for citizens petitions, but the SWRCB must approve that provision and it must include the following pieces of information (see below). In order for an immediate action by the SWRCB, it must create “imminent or irreparable injury.” This is a very high bar and one that will only be used in egregious situations.
  + The petition process is put in place so that downstream users that are injured by actions of others have the ability to ask for enforcement of existing water rights violations.
    - *(b) The board may commence an interim relief proceeding on its own motion or upon the petition of an interested party. The board shall not accept a petition that does not include all of the following information:*
      * *(1) The name and mailing address of the petitioner.*
      * *(2) A description of the specific diversion or use of water that the petitioner is contesting.*
      * *(3) A statement of the petitioner’s interest in the contested diversion or use of water.*
      * *(4) Identification of the adjudicative proceedings in which interim relief is requested.*
      * *(5) A description of the harm or injury complained of.*
      * *(6) An explanation of the nexus between the diversion or use and the alleged harm or injury.*
      * *(7) The relief the petitioner is requesting.*
      * *(8) A statement of reasons explaining why the relief is justified.*
      * *(9) Any additional information that the board may deem appropriate.*
        + *(c) The board may dismiss a petition that does not raise substantial issues that are appropriate for review.*
        + *(d) Unless the board concludes that consideration*
* **Porter Cologne:**
  + “Also, it appears local governments use Title 13 inspection warrants a lot to ascertain compliance with building codes and health/ safety requirements. “
  + “I’ve been told the WB and Regional Boards can get access under Porter Cologne, but I believe that’s probably a condition that is written directly into discharge permits rather than in statute (which makes it easier).”
  + “And speaking of which, the WB appears to write the right to site access into all post-1914 water right permits and licenses that it issues (see sample below from a water right I got for one of our projects), so for purposes of our bill we’re really only talking about warrants for pre-14 and riparian rights.”
    - A. Right holder shall grant, or secure authorization through right holder’s right of access to property owned by another party, the staff of the State Water Board, and any other authorized representatives of the State Water Board the following:
  + - * 1. Entry upon property where water is being diverted, stored or used under a right issued by the State Water Board or where monitoring, samples and/or records must be collected under the conditions of this right;
  + - * 2. Access to copy any records at reasonable times that are kept under the terms and conditions of a right or other order issued by State Water Board;
  + - * 3. Access to inspect at reasonable times any project covered by a right issued by the State Water Board, equipment (including monitoring and control equipment), practices, or operations regulated by or required under this right; and,
  + - * 4. Access to photograph, sample, measure, and monitor at reasonable times for the purpose of ensuring compliance with a right or other order issued by State Water Board, or as otherwise authorized by the Water Code.