



Shasta River Water Association president & illegal water diverter Jim Scala (credit: Sacramento Bee)

In [a Legal Planet Post earlier this week](#), I recounted the saga of how federal prosecutors recently secured the criminal conviction of Dennis Falaschi, the former San Joaquin Valley water district general manager who oversaw the decades-long theft of millions of gallons of publicly-owned water from California's Central Valley Project. That successful prosecution certainly qualifies as a good news story on the environmental enforcement front.

But it's rare indeed when such water rights violations are prosecuted criminally, especially by the United States government. That's true for two reasons: first, the federal government plays only a modest role when it comes to administering and enforcing water rights laws. That's because across the U.S., water rights administration is primarily the responsibility of *state* regulators, applying and enforcing *state* laws. Second, the vast majority of water rights violations-like environmental violations generally-are pursued using *civil* fines and sanctions, rather than under more draconian criminal law system.

Which brings us to another California example of egregious theft of the public's precious water supplies for private gain, to the detriment of other, law-abiding water users, the public and the environment.

In November 2022, former [Sacramento Bee reporters Dale Kasler and Ryan Sabalow wrote in a Bee article](#) that earlier that year-during the height of an intense, multiyear California drought-farmers and ranchers in rural Siskiyou County openly defied a "curtailment order" that had been lawfully adopted by California's State Water Resources Control Board. That order mandated reduced diversions from the Shasta River in the northwest corner of the state. Ignoring the State Board's curtailment order, the Shasta River Water Association turned on their pumps, sucking from the river nearly two-thirds of the river's remaining

flows. The result? The death of coho salmon—listed under the federal and state Endangered Species Acts—that had inhabited the river, loss of recreational opportunities on the Shasta River for members of the public, and even less available water for other local water users who had abided by the state curtailment order.

The renegade Siskiyou County farmers and ranchers were unrepentant and openly defiant. The reason? The financial benefit to the Shasta River Water Association and its members of continuing to fully irrigate their fields during the extreme drought dwarfed the maximum civil fines the State Board was empowered by California law to assess for the violation.

The November 2022 Sacramento Bee article went on to report that while the Shasta River illegal diversions were the most egregious violation of state water law in recent memory, they were far from an isolated incident. The Bee reporters wrote that in fact, “farmers and other water users [across California] frequently ignore state drought regulations.”

The Shasta River illegal water diversions and subsequent Sacramento Bee expose' served as a catalyst for proposed California water reform legislation that was introduced in January 2023: [AB 460 by Assemblymember Bauer-Kahan](#). AB 460 as enacted would have changed state water law in two specific and positive ways: first, the bill would increase the fines for illegal water diversions from existing law's pitifully small amounts to a level that could actually serve as an effective deterrent to illegal water diversions such as those committed on the Shasta River: \$10,000 per day for each such unpermitted diversion and up to \$2500 for each acre foot of water illegally removed from a California river, stream or lake. Second, AB 460 would have clarified the State Water Board's “interim relief” authority to impose these fines promptly and without first having to seek a court's approval to do so. (It's been well-established for many years that the Board and California courts have *concurrent* authority to oversee and enforce California's water rights system.)

AB 460 passed the State Assembly in 2023, but did not receive a vote in the State Senate before the end of the 2023 legislative session. Under legislative protocols, that meant that AB 460 became a “two-year bill” and could be considered by the Senate in the 2024 legislative session.

This year, politics played a key role in the fate of AB 460: despite opposition from water agencies and users, the adverse publicity surrounding the 2022 Shasta River illegal diversions was influential enough to preserve the bill's substantial increase in civil fines for illegal water diversions—especially in times of severe drought. However, Assemblymember Bauer-Kahan has bowed to the demands of state water users and dropped AB 460's reforms that would have enhanced the Water Board's ability to assess these civil fines promptly and

without prior court approval. This week [the pared-down bill](#) passed the Senate Natural Resources & Water Committee. It's likely to be approved by the full Legislature and sent to Governor Newsom's desk by the end of this summer.

In politics as in other aspects of life, obtaining half a loaf is better than none. The overdue increase in civil fines authorized by AB 460 will allow California's State Water Resources Control Board and the courts to more effectively deter the kind of illegal water diversions in California that occurred during the 2022 drought. But the inability to enact needed legislative reforms to the Board's interim relief authority means that collecting those heightened fines will continue to be an inefficient, time-consuming and drawn-out process.

A postscript: on June 8th, [the State Water Resources Control Board announced "conditional curtailments" of private water diversions from the Shasta River watershed](#). So, assuming AB 460 is in fact enacted into law, we'll soon discover whether the increased civil fines the Board can impose for violations of its curtailment orders serve as an effective deterrent to those who've already demonstrated their utter disregard for past Board water diversion limits.

*(Next week: the most important tool California state water regulators and the public can use to make state water law and policy more functional and enforceable.)*