

Date of Hearing: May 4, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2505 (Gray) – As Amended March 24, 2022

**SUBJECT:** Water theft: irrigation districts.

**SUMMARY:** Specifies that irrigation districts may impose fines or penalties for water theft in accordance with existing Irrigation District Law. Specifically, **this bill:**

- 1) Provides that irrigation districts may impose fines or penalties for water theft in accordance with existing Irrigation District Law.
- 2) Specifies that alternative provisions allowing for the imposition, enforcement, collection, and administrative review of fines or penalties for water theft shall not cap or limit fines that an irrigation district may impose under Irrigation District Law.

**EXISTING LAW:**

- 1) Establishes Irrigation District Law in the Water Code that enumerates the governance structure, powers, duties, and financial authority, among other provisions, of most irrigation districts.
- 2) Specifies that an irrigation district may do any act necessary to furnish sufficient water in the district for any beneficial use.
- 3) Provides that an irrigation district may make such reasonable regulations to secure distribution of water in accordance with determined rights as may be needed.
- 4) Specifies, generally, that a violation of a local ordinance is a misdemeanor unless by ordinance it is made an infraction. In general, every ordinance violation that is determined to be an infraction is punishable by:
  - a) A fine not exceeding \$100 for a first violation.
  - b) A fine not exceeding \$200 for a second violation of the same ordinance within one year; and.
  - c) A fine not exceeding \$500 for each additional violation of the same ordinance within one year.

**FISCAL EFFECT:** None.

**COMMENTS:**

- 1) **Bill Summary.** This bill specifies that that irrigation districts may impose fines or penalties for water theft in accordance with existing Irrigation District Law. This bill also provides that alternative provisions allowing for the imposition, enforcement, collection, and administrative review of fines or penalties for water theft shall not cap or limit fines that an

irrigation district may impose under Irrigation District Law. This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "AB 2505 simply provides technical and clarifying language that irrigation districts retain their local authority to determine appropriate fines within their jurisdiction. As drought conditions worsen, water scarcity drives the price of water up and incentivizes additional water theft. Fines and penalties within irrigation districts must continue to reflect these changing dynamics to avoid creating circumstances where the theft of water is more economical than its legal purchase."
- 3) **Irrigation Districts.** California's more than 90 irrigation districts function under a collection of statutes known as the Irrigation District Law that describe their governance structure and authority. In general, these districts are governed by a five-member board of directors, with each member representing a division within the district.

In most cases, registered voters are eligible to vote in district elections, but directors (also referred to as board members) must be voters, landowners, and residents in the division of the district they represent. This landowner requirement reflects the historical role of irrigation districts to exclusively provide irrigation water to agricultural land. However, as California's population has grown, more and more residential and commercial development is encroaching on agricultural land. In response to this growth, many irrigation districts began providing retail water service to residential customers that live within their jurisdictions in the absence of traditional retail water suppliers in the area, or providing electricity services.

- 4) **Water Theft.** State law establishes "water theft" as a misdemeanor. A person can be found guilty of water theft if they commit any of the following actions without paying for utility services:
  - a) Diverts or causes to be diverted utility services, by any means.
  - b) Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function by tampering or by any other means.
  - c) Tampers with any property owned by or used by the utility to provide utility services.
  - d) Makes or causes to be made any connection with or reconnection with property owned or used by the utility to provide utility services without the authorization or consent of the utility.
  - e) Uses or receives the direct benefit of all or a portion of utility services with knowledge or reason to believe that the diversion, tampering, or unauthorized connection existed at the time of that use, or that the use or receipt was otherwise without the authorization or consent of the utility.

If the total value of all utility services stolen is more than \$950, or if the defendant has previously been convicted of an offense under this section or other similarly defined sections, then the violation is punishable with up to one year of imprisonment.

AB 427 (Eggman), Chapter 137, Statutes of 2021, authorized water agencies to adopt an ordinance that prohibits water theft, and to increase the administrative fine or penalty in excess of the existing limitations. This bill placed limitations on the amount of a fine for a violation of a water theft ordinance depending upon the type of violation and the number of violations within one year. Lastly, this bill required a local agency to establish a process for granting a hardship waiver to reduce the amount of the fine imposed for water theft on parties who can demonstrate an undue financial burden.

- 5) **Arguments in Support.** According to the Merced Irrigation District, “Preventing illegal diversions of water becomes even more important in drought years because once that water has been taken, it cannot be replaced. Additionally, with various water policies and mandates being implemented – such as the Sustainable Groundwater Management Act – the issue of water theft will continue to present a significant challenge to water purveyors, such as MID, well into the future.

“Among the most important tools MID and others have to prevent water theft is the ability to develop and implement policies and penalties that not only compensate the District for water that may be taken, but also serve to deter these illegal diversions from occurring in the first place. It is absolutely vital that MID and other irrigation districts maintain the broad authority granted to them under the California Water Code to establish fines and penalties for water theft.

“AB 2505 intends to clarify that irrigation districts may enjoy the new authority under last year’s Senate Bill 427 if desired, but are not necessarily constrained to those provisions. Under AB 2505, irrigation districts may instead develop and impose policies or penalties that are more representative of the quantities of water that may be taken from an irrigation district, and are more tailored to the community and customer base served by a particular irrigation district.”

- 6) **Arguments in Opposition.** None on file.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Municipal Utilities Association  
Merced Irrigation District  
Valley Ag Water Coalition

##### **Opposition**

None on file

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