

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 1146 (Papan)
Version: June 23, 2025
Hearing Date: July 15, 2025
Fiscal: Yes
Urgency: No
AM

SUBJECT

Water infrastructure: dams and reservoirs: water release: false pretenses

DIGEST

This bill prohibits the release of stored water from a reservoir owned and operated by the United States that is located in California if the release is done under false pretenses, as specified, and authorizes injunctive relief to be sought by the State Water Resources Control Board or the Attorney General in the name of the people of the State of California.

EXECUTIVE SUMMARY

In January 2025, a number of deadly wildfires in Los Angeles, including the Palisades and Eaton fires, collectively burned over 39,000 acres,¹ caused at least 30 deaths,² destroyed over 16,000 structures, and resulted in property damage estimates ranging from \$28 to \$53.8 billion.³ During this devastating emergency when real assistance from the federal government was needed, President Trump issued an executive order that caused the release of over 2 billion gallons of water from the Success Lake and Kaweah Lake. The purported purpose of the release was to bring water to Southern California to assist the wildfires; however, it was known by the Army Corps of Engineers colonel responsible for releasing the water that there was no way the released water could reach Southern California. Instead, this stunt resulted in the waste of scarce and badly needed irrigation water, and caused panic in downstream communities who had only an hour to prepare for the release.⁴ The bill is author sponsored and supported by the

¹ Governor's Exec. Order No. N-4-25 (Jan. 12, 2025).

² Jesus Jiménez, *L.A. Fires Death Toll Rises to 30 After Remains Are Found*, L.A. Times, (Apr. 3, 2025), available at <https://www.nytimes.com/2025/04/03/us/la-fires-death-toll.html>.

³ *Palisades and Eaton wildfires caused up to \$53.8 billion in property damage, study finds*, The Orange County Register, (Feb. 27, 2025), available at <https://www.ocregister.com/2025/02/27/palisades-and-eaton-wildfires-caused-up-to-53-8-billion-in-property-damage-study-finds/>.

⁴ Gabriel Canon, *'Ridiculous blunder': Trump wades into California's water wars – and strikes some of his strongest supporters*, The Guardian, (Feb. 11, 2025), available at <https://www.theguardian.com/us-news/2025/feb/11/california-water-trump>.

California Democratic Party Rural Caucus. No timely opposition was received by the Committee. In the Assembly, there were several organizations in opposition to the bill, but in light of recent amendments, they have moved to neutral. This bill passed the Senate Committee on Natural Resources and Water by a vote of 7 to 0.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Provides that Congress has the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in the U.S. Constitution is to be construed as to prejudice any claims of the United States, or of any particular State. (U.S. Const. art. IV, § 3, cl. 2.)

Existing state law:

- 1) Authorizes the executive director of the State Water Resources Control Board (State Water Board) to issue a complaint to any person that diverts water in violation of a water right, fails to comply with a cease and desist order issued by the State Water Board, or makes a willful misstatement on a water diversion and use statement. (Wat. Code § 1055.)
- 2) Subjects all dams and reservoirs to regulation and oversight by the Division of Safety of Dams (DSOD) within the Department of Water Resources (DWR). (Wat. Code § 6075)
- 3) Defines “dam” as any artificial barrier, together with additional appurtenant structures (including training walls, spillways, outlets, tunnels, channels, pipelines, or dikes) that may impound or divert water and is either (a) 25 feet or greater in height from the natural stream bed to the top of the barrier/maximum storage elevation, or (b) impounds a capacity of 50 acre-feet of water or more. (Wat. Code § 6002.)
- 4) Excludes dams owned and operated by the federal government from regulation and oversight by DSOD. (Wat. Code § 6009.)

This bill:

- 1) Prohibits the release of stored water from a reservoir owned and operated by the United States located in this state if the release is done under false pretenses.
- 2) Provides that a release under false pretense means a release of water from a reservoir owned and operated by the United States in a manner that is knowingly,

designedly, and intentionally under any false or fraudulent representation as to the purpose and intended use of water.

- 3) Authorizes the State Water Board, the Attorney General on behalf of the State Water Board, or the Attorney General in its independent capacity to bring an action for the issuance of injunctive relief, as specified, when a release of stored water is threatened, is occurring, or has occurred in violation of the above-described prohibition.

COMMENTS

1. Stated need for the bill

The author writes:

This bill is in response to President Trump's order that water be released from Success Lake and Kaweah Lake from January 31, 2025 through February 2, 2025. Unquestionably, these releases were a political stunt by President Trump and served no purpose other than to provide a photo for a social media post. The net result was that the president placed communities downstream of the reservoirs at risk of flooding and played with their livelihoods under the false pretense that the released water would 'help' southern California fight wildfires. Furthermore, the released water is California water that farmers and water managers had legal rights to use under California law. The released water should have remained in storage until the summertime when farmers and communities will actually need it. Given the effects of climate change and resulting water supply challenges, this kind of fraud, chicanery, and waste cannot be allowed to occur again.

2. Background

The Senate Committee on Natural Resources and Water analysis of this bill provides useful context on the events that precipitated the author introducing this bill:

On January 24, 2025, President Trump released an executive order that required federal officials to exert all efforts to send more water to fight southern California wildfires. On January 30, 2025, the Trump Administration notified water managers on the Tule and Kaweah Rivers that it would soon be releasing water from Success Lake and Kaweah Lake, respectively, in response to the President's executive order.

The Tule and Kaweah rivers flow into the old Tulare Lake bed, a terminal water body with no hydrologic connection to southern California. On January 31st, President Trump posted on social media "photo of beautiful water flow that I just opened in California. Today, 1.6 billion gallons and, in 3 days, it will be 5.2 billion gallons. Everybody should be happy about this long fought Victory! I only wished

they listened to me six years ago – There would have been no fire!”

On Success Dam (Success Lake), the releases went from 50 cubic-feet per second (cfs) on January 30th to a high of 1,000 cfs on January 31st and returned to 50 cfs on February 2nd. On Terminus Dam (Lake Kaweah), the releases went from 3 cfs on January 30th to a high of 1,500 cfs on January 31st and returned to 3 cfs on February 2nd.

Combined, more than 2 billion gallons of water was released. Contrary to President’s Trump’s claims, the releases did not result in sending more water to southern California as represented in the executive order. Further, there were no storms forecasted for the area and the snowpack was well below average. There was sufficient capacity to store the water that was released. The releases also occurred at a time when the farmers downstream did not need the water for irrigation.⁵

Newspaper reports of the incident reported that the Army Corps of Engineers colonel responsible for releasing the water from the reservoirs knew that the water was unlikely to reach Southern California as President Trump claimed.⁶ A memo written four days after the release stated that the water “could not be delivered to Southern California directly” and that the release was conducted to mollify the executive order.⁷

3. This bill raises issues of federal preemption

The concept of preemption derives from the “supremacy clause” of the federal Constitution, which provides that the laws of the United States “shall be the supreme Law of the Land.”⁸ Courts have typically identified three circumstances in which federal preemption of state law occurs:

(1) express preemption, where Congress explicitly defines the extent to which its enactments preempt state law; (2) field preemption, where state law attempts to regulate conduct in a field that Congress intended the federal law exclusively to occupy; and (3) conflict preemption, where it is impossible to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress.⁹

⁵ Senate Committee on Natural Resources and Water analysis of AB 1146 (2025-26 reg. sess.) as amended June 23, 2025 at p. 1.

⁶ Scott Dance & Joshua Partlow, *Army Corps knew Trump order would waste California water, memo shows*, Washington Post, (Mar. 7, 2025), available at <https://www.washingtonpost.com/climate-environment/2025/03/07/trump-water-release-california-fires/>. See also, Ian James, *Water officials knew that opening dams to meet Trump’s wishes was ill-advised. Here’s why it happened anyway*, Los Angeles Times, (Mar. 13, 2025), available at <https://www.latimes.com/environment/story/2025-03-13/trump-army-corps-dam-water-dumped>.

⁷ *Ibid.*

⁸ U.S. Const., art. VI, cl. 2.

⁹ *English v. Gen. Elec. Co.* (1990) 496 U.S. 72, 78-80.

The property clause of the U.S. Constitution provides that Congress has the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.¹⁰ The property clause has been held “to give Congress the power to determine what are ‘needful’ rules ‘respecting’ the public lands.”¹¹ The court stated the “general government doubtless has a power over its own property analogous to the police power of the several states, and the extent to which it may go in the exercise of such power is measured by the exigencies of the particular case.”¹² In *Kleppe*, the court noted that the property clause does not authorize control over the public policy of a state, and that “[a]bsent consent or cession a [s]tate undoubtedly retains jurisdiction over federal lands within its territory.”¹³ However, the Court did note Congress has complete power over public property entrusted to it, and any “federal legislation necessarily overrides conflicting state laws.”¹⁴

The McCarran Amendment of 1952 provided consent for the U.S. to be a defendant in any suit for the adjudication of water rights of a river system or other source where the U.S. is the owner or in the process of acquiring those rights by appropriation under State law, by purchase, by exchange, or otherwise when the U.S. is a necessary party to the suit.¹⁵ The amendment further provided that the U.S. is subject to the judgments, orders, and decrees of the court having jurisdiction and may obtain review in the same manner as a private individual, provided that no judgment or costs can be entered against the U.S. in any suit.

Given the above, it is unclear if the bill would be found to be preempted under federal law. However, if the bill were enacted and the state tried to enforce it, the issue of preemption would undoubtedly be litigated in the case.

SUPPORT

California Democratic Party Rural Caucus

OPPOSITION

None received.

RELATED LEGISLATION

Pending Legislation: None known.

¹⁰ U.S. Const. art. IV, § 3, cl. 2.

¹¹ *Kleppe v. New Mexico* (1976) 426 U.S. 529, 539.

¹² *Camfield v. U.S.* (1897) 167 U.S. 518, 525.

¹³ *Kleppe*, supra at 543.

¹⁴ *Ibid.*

¹⁵ 43 U.S.C. § 666

Prior Legislation: None known.

PRIOR VOTES

Senate Committee on Natural Resources and Water (Ayes 7, Noes 0)

Assembly Floor (Ayes 55, Noes 17)

Assembly Appropriations Committee (Ayes 11, Noes 3)

Assembly Water, Parks and Wildlife Committee (Ayes 8, Noes 3)
