

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 1865 (Bennett)  
Version: March 16, 2022  
Hearing Date: June 14, 2022  
Fiscal: Yes  
Urgency: No  
AM

**SUBJECT**

Court fee waiver: water rights cases

**DIGEST**

This bill requires a court to initially grant permission to proceed without paying court fees and costs to a person who is joined or countersued in a case involving a water right held by that person.

**EXECUTIVE SUMMARY**

The adjudication of water rights in the state can be complex and involve many parties and counterclaims. Landowners can find themselves having to respond to litigation they did not initiate nor are likely to be involved in litigating in order to ensure their water rights are protected. Every time a landowner is brought into a water rights dispute, the landowner is required to pay filing fees in order to answer any claims made against them and their water rights, even for minor stakes in a dispute. An example of this occurred in the author's district where more than 12,000 landowners were joined into litigation regarding water rights in the Ventura River watershed. The bill would seek to lessen the financial burden on homeowners being able to protect their water rights by providing for an initial waiver for court costs and fees to a person who is joined or countersued in a case involving a water right held by that person.

The bill is sponsored by the author. The bill is supported by Regional Water Authority. There is no known opposition.

## PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides an initial waiver of all court costs and fees to persons receiving specified public benefits. (Gov. Code § 68326(a).)
- 2) Provides for an initial waiver of all court costs and fees to a person whose monthly income is 125 percent or less of the current poverty guidelines, as provided, or a person who the court determines cannot pay court fees without using moneys that normally would pay for the common necessities of life for the applicant and the applicant's family. (Gov. Code § 68326(b)-(c).)
- 3) Provides a judicial process for adjudicating rights to use surface or groundwater pursuant to ownership of riparian lands or lands overlying groundwater aquifers, or appropriation of surface water from streams and lakes (Wat. Code § 1200).
- 4) Declares that because of the conditions prevailing in this state the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare, and that the right to water or to the use or flow of water in or from any natural stream or water course in this state is to be limited to such water as is reasonably required for the beneficial use to be served, and such right does not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. (Cal. Const. art. X, Sec. 2.)

This bill requires a court to initially grant permission to proceed without paying court fees and costs to a person who is joined or countersued in a case involving a water right held by that person.

## COMMENTS

### 1. Stated need for the bill

The author writes:

Unfortunately, some residents may not be able to pay their filing fees when they are brought into a water case through no fault of their own. When a cross complaint is filed in a water case, everyone who uses the watershed is included. Even if a person is summoned, they still have to file to protect their rights and if

they cannot, they lose the ability to fight for their rights. AB 1865 provides the ability for homeowners to fight for their water rights.

2. The bill seeks to protect landowners who are brought into water rights litigation

The adjudication of water rights in the state can be complex and involve many parties. According to the State Water Resources Control Board a “water right is a legal entitlement authorizing water to be diverted from a specified source and put to beneficial, nonwasteful use. Water rights are property rights, but their holders do not own the water itself.”<sup>1</sup> Existing state law recognizes three types of water rights – riparian rights, appropriative rights, and groundwater rights. Riparian rights are granted to landowners whose land is adjacent to waterways. Appropriative rights allow the holder to divert water based on a theory of first in time, first in right, and is a relic of the Gold Rush era. Groundwater rights give landowners overlying groundwater basins rights to pump groundwater. With the impacts of climate change affecting the scarcity and availability of water, via droughts and other conditions, litigation around water rights will likely increase in the near future.

This bill is a direct response to a situation that arose in the author’s district. A suit was filed against the City of Ventura and the State Water Resources Control Board by Santa Barbara Channelkeeper, a nonprofit group, claiming that the city was excessively pumping from the Ventura River and causing detriment to critical habitat for endangered steelhead. During the course of the litigation, the city filed amended cross-complaints against all water right holders in the Ventura River watershed after successfully arguing that the city’s actions might not be the sole reason for the current condition of the river and that other users of the river may also need to reduce their water use to remedy the issue. As a result, more than 12,000 property owners received notices that that in order to fully protect their water rights, they had to answer the counter suit by the city. In order to file an answer, these property owners were required to pay filing fees in litigation they did not initiate and that in all likelihood would be litigated mostly by the city.

This bill seeks to address this issue by requiring a court to initially grant permission to proceed without paying court fees and costs to a person who is joined or countersued in a case involving a water right held by that person. The bill has no known supporters or opposition.

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<sup>1</sup> State Wat. Resources Control Bd., *The Water Right Process* (updated Aug. 20, 2020), available at [https://www.waterboards.ca.gov/waterrights/board\\_info/water\\_rights\\_process.html](https://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.html).

3. Statement in support

The Regional Water Authority writes in support:

As California continues to adapt water management to climate change the further development of water rights at a watershed level is foundational. This drives long-term planning and investments. Invariably, there will be situations where all water rights holders in a watershed or groundwater basin will have to resolve issues. It is important that all water rights holders participate in these proceedings when they occur. AB 1865 will help ensure robust participation in a water rights case.

**SUPPORT**

Regional Water Authority

**OPPOSITION**

None know

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

AB 3047 (Daly, Ch. 399, Stats. 2018) waived certain court fees when the applicant is an attorney representing a tribe in a child welfare matter under the federal Indian Child Welfare Act.

AB 2448 (Feuer, Ch. 462, Stats. 2008) revised and recasted provisions related to courts granting fee waivers for applicants who meet specified standards or criteria.

**PRIOR VOTES:**

Assembly Floor (Ayes 76, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Water, Parks and Wildlife Committee (Ayes 15, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)

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