

AMENDED IN SENATE JULY 16, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2573

Introduced by Assembly Member Machado

February 23, 1998

An act to amend Section 1126 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2573, as amended, Machado. State Water Resources Control Board: decisions and orders: judicial review.

Existing law authorizes any party aggrieved by any decision or order of the State Water Resources Control Board, not later than 30 days from the date of final action by the state board, to file a petition for a writ of mandate for review of the decision or order. Existing law provides that, if no aggrieved party petitions for a writ of mandate within the time provided, the decision or order of the state board is not subject to review by any court.

This bill would provide that the election by the United States not to be a party in any court case involving the review of a decision or order by the state board relating to a permit or license to appropriate water held by the state or the United States shall not, *in and of itself*, be ~~a~~*the* basis for dismissal of that case. ~~The bill would require the state board, and any other state party, to waive any immunities provided under the Eleventh Amendment to the United States Constitution in any removal to, or review by, a federal court of all or part of~~

~~the issues in the judicial proceeding reviewing that decision or order.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1126 of the Water Code is
2 amended to read:

3 1126. (a) *It is the intent of the Legislature that all*
4 *issues relating to state water claims be reviewed in state*
5 *courts to the greatest extent practicable, including, but*
6 *not limited to, review of administrative actions taken by*
7 *the board. It is further the intent of the Legislature that*
8 *the courts assert jurisdiction and exercise discretion to*
9 *fashion appropriate remedies pursuant to Section 389 of*
10 *the Code of Civil Procedure to facilitate the resolution of*
11 *state water claims.*

12 (b) Any party aggrieved by any decision or order may,
13 not later than 30 days from the date of final action by the
14 board, file a petition for a writ of mandate for review of
15 the decision or order. Unless reconsideration makes
16 available a higher level of review of a decision or order
17 issued under authority delegated to an officer or
18 employee of the board, the right to petition shall not be
19 affected by the failure to seek reconsideration before the
20 board. The time for filing the petition for writ of mandate
21 shall be extended for any person who seeks
22 reconsideration by the board pursuant to this article.

23 ~~(b)~~

24 (c) Except as otherwise provided in this section,
25 Section 1094.5 of the Code of Civil Procedure shall govern
26 the judicial proceedings. For the purposes of subdivision
27 (c) of Section 1094.5 of the Code of Civil Procedure, the
28 court shall exercise its independent judgment on the
29 evidence in any case involving the judicial review of a
30 cease and desist order issued pursuant to Article 2
31 (commencing with Section 1831) of Chapter 12 of Part 2
32 of Division 2, and in any other case in which the court is



1 authorized by law to exercise its independent judgment
2 on the evidence.

3 ~~(e)~~

4 (d) If no aggrieved party petitions for a writ of
5 mandate within the time provided by this section, the
6 decision or order of the board shall not be subject to
7 review by any court.

8 ~~(d)-(1)~~

9 (e) In any court case reviewing a decision or order by
10 the state board relating to a permit or license to
11 appropriate water held by the state through the
12 department or any other state agency, or to a permit or
13 license to appropriate water held by the United States
14 through the Bureau of Reclamation or any other federal
15 agency, the election by the United States, or any agency
16 thereof, not to be a party shall not, *in and of itself*, be a ~~the~~
17 basis for dismissal pursuant to Section 389 of the Code of
18 Civil Procedure or any other provision of law.

19 ~~(2) In any removal to, or review by, a federal court of~~
20 ~~all or part of the issues in the judicial proceeding~~
21 ~~reviewing a decision or order described in paragraph (1);~~
22 ~~the state board, and any other state party, shall waive any~~
23 ~~and all immunities provided under the Eleventh~~
24 ~~Amendment to the United States Constitution.~~

