

Statutory Water Rights Law

And Related Water Code Sections

(As amended, including Statutes of 1998)



JANUARY 1999

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

STATE WATER RESOURCES CONTROL BOARD

The State Water Resources Control Board was established by the 1967 Legislature (See Water Code Section 175). The Board succeeded to the functions of the former State Water Rights Board and the State Water Quality Control Board.

The formation of the Board resulted in the coordination of the water rights, water pollution, and water quality functions of the state government. Water pollution and water quality are now taken into account in conjunction with availability of unappropriated water whenever applications for appropriation of water are considered.

This pamphlet contains statutes which concern the administration of water rights law. A companion booklet entitled *THE PORTER-COLOGNE WATER QUALITY CONTROL ACT* addresses the State Board's water quality programs.



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INTRODUCTION

The State Water Resources Control Board publishes this collection of California statutes pertaining to the law of water rights as part of its public information program. This booklet contains sections from the California Constitution, the California Water Code, and other related codes which affect water rights decisions.

In addition to the statutes contained in this booklet, decisions of the Water Resources Control Board are guided by case law. A listing of major recent decisions is included.

THE STATUTES IN CONTEXT

In general, the statutes contained in this booklet govern the acquisition and exercise of rights to reasonable and beneficial use of surface waters (and of groundwater flowing in known and definite channels) by priority of appropriation initiated on or after December 19, 1914. That is the effective date of the Water Commission Act, which is the origin of many of the water right provisions of today's Water Code.

California law recognizes and protects rights to the use of surface waters other than rights initiated pursuant to the Water Commission Act or the Water Code. Foremost among these are rights acquired by priority of appropriation initiated before December 19, 1914, commonly referred to as "pre-1914 rights" (see *Wells v. Mantes* (1893) 99 Cal. 583, 34 Pac. 324) and riparian water rights, which are part and parcel of lands contiguous to streams or lakes (see *Lux v. Haggin* (1886) 69 Cal. 255, 10 Pac. 674). Although several provisions of the Water Code imply the existence of these other rights, they are essentially the product of the decisional law of the courts of this State.

Generally the superior courts continue to be the forum of first instance for resolution of conflicts involving pre-1914 and riparian rights, although some administrative procedures established under the Water Code apply to pre-1914 and riparian water rights (See California Water Code Sec. 275, 1607). In addition, the Water Code authorizes a proceeding whereby all rights to the use of surface waters within a given stream system, regardless of doctrinal origin, may be adjudicated on a system-wide basis. (See Water Code Section 2500 and following sections.) This proceeding, known as a statutory adjudication, quantifies and prioritizes all water rights and integrates them into a comprehensive decree, thus producing a high degree of certainty and security of right.

California law also recognizes and protects rights to extract and use waters percolating beneath the surface of the land. Again, while the Water Code implies the existence of these groundwater rights, their doctrinal bases and characteristics are essentially the product of the decisions of our courts. (See *Katz v. Walkinshaw* (1902) 141 Cal. 138, 70 Pac. 663; additional opinion on rehearing (1903): 141 Cal. 116, 74 Pac. 766.)

Finally, the section of the California Constitution reproduced in this booklet (Calif. Const., Art. 10, Sec. 2) is recognized as the fundamental expression of the water policy of this State. Our Constitution requires that the beneficial use of



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water be maximized, that water be conserved, and that water be diverted and used under the rule of reasonableness. This Constitutional mandate applies to all uses of water, regardless of the legal basis of the water right. (See *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 40 P.2d 486.)

RECENT JUDICIAL DECISIONS

Since the mid-1970s, appellate courts (including the United States Supreme Court) have issued several important opinions on water right issues. These decisions include the following in chronological order:

- *Bank of America N.T. & S.A. v. State Water Resources Control Bd.* (1974) 42 Cal.App.3d 198, 116 Cal.Rptr. 770. In reviewing public interest findings of the State Water Resources Control Board in proceedings on applications to appropriate water, the courts are to use the "substantial evidence" standard of review.
- *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 537 P.2d 1250, 123 Cal.Rptr. 1. This case explains numerous points of law with respect to rights to use of groundwater, including pueblo rights, rights to recapture waters imported and spread to augment groundwater supplies, overlying rights and appropriative rights. Mutual prescription cannot be applied against public entities; rights to use of groundwater from an overdrafted basin are apportioned equitably.
- *People v. Forni* (1976) 54 Cal.App.3d 742, 126 Cal.Rptr. 851. To carry out the California Constitution mandate that beneficial use of water be maximized and that waste and unreasonable use and diversion be prohibited, riparian owners can properly be required to incur some reasonable costs or experience some inconvenience in connection with exercise of their riparian water rights.
- *California v. United States* (1978) 438 U.S. 645, 57 L.Ed.2d 1018, 98 S.Ct. 2985. Pursuant to the Federal Reclamation Act of 1902, the State may impose conditions on water appropriations of the United States Bureau of Reclamation, so long as any such condition does not directly conflict with any clear Congressional directive respecting the federal project.
- *United States v. State of New Mexico* (1978) 438 U.S. 696, 57 L.Ed.2d 1052, 98 S.Ct. 3012. The federal reserved water right, which is a right created by federal law, is limited to that amount of water required to meet the primary purposes for which the federal land was withdrawn. Water rights needed to serve secondary reservation purposes must be acquired pursuant to state law.
- *Fullerton v. State Water Resources Control Bd.* (1979), 90 Cal.App.3d 590, 153 Cal.Rptr. 518; and *California Trout, Inc. v. State Water Resources Control Bd.* (1979) 90 Cal.App.3d 816, 153 Cal.Rptr. 672. Although recreation and fish and wildlife preservation and enhancement are beneficial uses of water under California water rights law, an *in situ* use for these purposes cannot be the basis of an application to appropriate water.
- *In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, 158 Cal.Rptr. 350, 599 P.2d 656. In a general statutory adjudication proceeding pursuant to



Water Code Section 2500 and following sections, the Board may—if the constitutional rule of reasonableness so requires—provide for assigning a lower priority to presently unexercised riparian rights than the priority assigned to all presently active rights, whether riparian or appropriative.

- *People v. Shirokow* (1980) 26 Cal.3d 301, 162 Cal.Rptr. 30, 605 P.2d 859. Since the Water Commission Act, a prescriptive water right cannot be acquired against the authority of the State to allocate water through the permit system.
- *Environmental Defense Fund v. East Bay Muni. Util. Dist.* (1980) 26 Cal.3d 183, 161 Cal.Rptr. 466, 605 P.2d 1. The Board and the superior courts have concurrent original jurisdiction to enforce the self-executing provisions of Article X, Section 2 of the California Constitution, except where overriding considerations exist, such as are presented by health and safety dangers, in which case the Board should have exclusive original jurisdiction.
- *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 189 Cal.Rptr. 346, 658 P.2d 709, cert. denied 464 U.S. 977. This decision explains the relationship between the public trust doctrine and the appropriative water rights doctrine, including the duty and authority of the Board and the courts to safeguard public trust uses of navigable waters.
- *Wright v. Goleta Water Dist.* (1985) 174 Cal.App.3d 74, 219 Cal.Rptr. 740. The *Long Valley* principle (*supra*), which authorizes the Board to define and otherwise limit future riparian rights in conducting a statutory adjudication procedure pursuant to Water Code Section 2500 and following sections is not applicable in a superior court groundwater adjudication. Accordingly, the superior court may not subordinate an unexercised overlying right claim to presently exercised appropriative uses.
- *United States v. State Water Resources Control Bd.* (“Delta Water Cases”) (1986) 182 Cal.App.3d 82, 227 Cal.Rptr. 161. This decision explains and clarifies numerous points of water law, most notably the relationship between the water quality regulatory authority of the Board under the Porter-Cologne Water Quality Control Act (Water Code Section 13000 and following sections) and the Board’s water right authority.
- *Imperial Irrigation District v. State Water Resources Control Bd.* (IID I) (1986) 183 Cal.App.3d 1160, 231 Cal.Rptr. 283. The Board is authorized to hold hearings, make findings, and issue orders in a proceeding on alleged waste or unreasonable diversion or use of water. The Board’s findings and orders in such a proceeding are subject to review by the courts by way of an administrative mandamus action.
- *In re Waters of Hallett Creek* (1988) 44 Cal.3d 448, 749 P.2d 324, 243 Cal.Rptr. 887, cert. denied 488 U.S. 824. The United States has riparian rights on federal reserved lands (e.g., national forest lands). The riparian rights of the United States on its reserved lands are the same as the rights of a private landowner on privately held land. However, the riparian rights of the United States on public domain land (e.g., lands administered by the Bureau of Land Management) are inferior to the rights of appropriation on the public land.

- *California Trout, Inc. v. State Water Resources Control Bd.* (Cal. Trout I) (1989) 207 Cal.App.3d 585, 255 Cal.Rptr. 184. This case explains the relationships between Fish and Game Code Sections 5937 and 5946, the public trust doctrine, and the prohibition against waste or unreasonable diversion or use of water. A variant of the public trust applies to non-navigable streams which sustain a fishery. The Fish and Game Code sections applicable in this case, requiring that a dam owner allow sufficient water to pass to keep fish in good condition below the dam, do not violate the reasonableness doctrine.
- *Golden Feather Community Association v. Thermalito Irrigation Dist.* (1989) 209 Cal.App.3d 1276, 257 Cal.Rptr. 836. The public trust doctrine does not require an appropriator who diverts water to storage at an artificial reservoir on a non-navigable stream to forego use of that water to maintain the reservoir for the recreational use of the public.
- *California v. Federal Energy Regulatory Commission (Rock Creek)* (1990) 495 U.S. 490 (1990). The State cannot condition a water right permit for hydropower generation on bypass flow requirements for the protection of instream beneficial uses in excess of flows required by the Federal Energy Regulatory Commission license for the project.
- *Imperial Irrigation Dist. v. State Water Resources Control Bd.* (IID II) (1990) 255 Cal.App.3d 548, 275 Cal.Rptr. 250, cert. denied (1991) 112 S.Ct. 171. The requirement that a water right holder cease waste or unreasonable diversion or use of water does not interfere with any vested right.
- *Sayles Hydro Associates. v. Maughan* (9th Cir. 1993) 958 F.2d 451. Federal Energy Regulatory Commission licensing occupies the field of hydropower regulation, preempting State water right requirements except to the extent the State's requirements relate to protection of proprietary rights.
- *PUD No. 1 v. Washington Department of Ecology* (1994) 511 U.S. 70. This case discusses the relationship between water quality and water quantity. States have authority under Section 401 of the Clean Water Act to require Federal Energy Regulatory Commission licensed hydropower projects to bypass flows to protect instream beneficial uses.
- *Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166 [36 Cal.Rptr.2d 886]. State water law does not preempt county ground water management.
- *Jordan v. City of Santa Barbara* (1996) 46 Cal.App.4th 1245 [54 Cal.Rptr.2d 340]. The priority of a riparian to natural flow of a stream is limited by what is reasonably required for beneficial use, not by distinctions as to whether the waters involved are "ordinary" or "flood" waters.
- *Pleasant Valley Canal Co. v. Borrer* (1998) 61 Cal.App.4th 742 [72 Cal.Rptr. 1]. Diversions in excess of the amount that can be put to reasonable beneficial use must be returned to the stream. Where prior private decree did not include all water right claimants, and expressly limits its application to a determination of rights as between the plaintiff and each individual defendant, the decree is not binding as between co-defendants. When an appropriator by direct diversion later



obtains a patent to riparian lands where water is being put to use pursuant to the appropriation, the owner has both appropriative and riparian rights. A private decree that does not include all water right claimants along a stream will not be construed to have extinguished unexercised riparian rights of parties to the decree absent clear evidence to that effect. Conveyance of land for road right of way, under circumstances where it would be unreasonable to assume that grantor intended to give up water rights on irrigable portions of the property being retained, does not sever riparian rights on retained property.

- *Natural Resources Defense Council v. Houston* (9th Cir. 1998) 146 F.3d 1118, Section 8 of the Reclamation Act of 1902 requires the United States to comply with state water laws unless those laws are directly inconsistent with clear congressional directives regarding the project. The term "congressional directive" means a preemptive federal statute. The provisions of the Central Valley Project Improvement Act concerning Friant Dam do not preempt section 5937 of the California Fish and Game Code.

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CALIFORNIA CONSTITUTION

ARTICLE X, SECTION 2

WATER

SEC. 2. It is hereby declared 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. 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 and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Riparian rights in a stream or water course attach to, but to no more than so much of the flow thereof as may be required or used consistently with this section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which the owner's land is riparian under reasonable methods of diversion and use, or as depriving any appropriator of water to which the appropriator is lawfully entitled. This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained.



WATER CODE

An act to establish a Water Code, thereby consolidating and revising the law relating to water, including the use of water, the acquisition and regulation of water rights, the control and utilization of water, the distribution of water, the supervision of dams, the use of and rights in streams, wells, pumping plants, and conduits, the establishment and operation of public districts relating to water, and to repeal certain acts and parts of acts specified herein. The people of the State of California do enact as follows:

GENERAL PROVISIONS

1. This act shall be known as the Water Code.
2. The provisions of this code, in so far as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations thereof, and not as new enactments.
3. All persons who, at the time this code takes effect, hold office under any of the acts repealed by this code, which offices are continued by this code, continue to hold them according to their former tenure.
4. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by this code, but all procedure thereafter taken therein shall conform to the provisions of this code so far as possible.
5. Unless the provision or the context otherwise requires, these definitions, rules of construction, and general provisions shall govern the construction of this code.
6. Division, part, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code.
7. Whenever a power is granted to, or a duty is imposed upon, a public officer, the power may be exercised or the duty may be performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise.
8. Writing includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement, petition, or record is required or authorized by this code, it shall be made in writing in the English language unless it is expressly provided otherwise.
9. Whenever reference is made to any portion of this code or of any other law of this State, the reference applies to all amendments and additions heretofore or hereafter made.

10. "Section" means a section of this code unless some other statute is specifically mentioned. "Subdivision" means a subdivision of the section in which that term occurs unless some other section is expressly mentioned.
11. The present tense includes the past and future tenses, and the future, the present.
12. The masculine gender includes the feminine and the neuter.
13. The singular number includes the plural, and the plural, the singular.
14. "County" includes city and county.
15. "Shall" is mandatory and "may" is permissive.
16. "Oath" includes affirmation.
17. "Signature" or "subscription" includes mark when the signer or subscriber can not write, such signer's or subscriber's name being written near the mark by a witness who writes his own name near the signer's or subscriber's name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto.
18. "State" means the State of California, unless applied to the different parts of the United States. In the latter case, it includes the District of Columbia and the territories.
19. "Person" means any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company.
(Amended by Stats.1994, Ch. 1010.)
20. "United States" means the United States of America, and in relation to any particular matter includes the officers, agents, employees, agencies, or instrumentalities authorized to act in relation thereto.
21. If any provision of this code, or the application thereof to any person or circumstance, is held invalid, the remainder of the code, or the application of such provision to other persons or circumstances, shall not be affected thereby.
22. "Department," unless otherwise specified, means the Department of Water Resources.
23. "Director," unless otherwise specified, means the Director of Water Resources.



24. The standard miner's inch of water is equivalent to one and one-half cubic feet of water per minute, measured through any aperture or orifice.

25. "Board," unless otherwise specified, means the State Water Resources Control Board.

26. Recycled water; reclaimed water: For the purposes of this code, "recycled water" or "reclaimed water" has the same meaning as recycled water as defined in subdivision (n) of Section 13050.

(Added by Stats. 1995, Ch.28)

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DIVISION 1. GENERAL STATE POWERS OVER WATER

CHAPTER 1. GENERAL STATE POLICY

100. It is hereby declared 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 water 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. The right to water or to the use or flow of water in or from any natural stream or watercourse in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.

100.5. It is hereby declared to be the established policy of this state that conformity of a use, method of use, or method of diversion of water with local custom shall not be solely determinative of its reasonableness, but shall be considered as one factor to be weighed in the determination of the reasonableness of the use, method of use, or method of diversion of water, within the meaning of Section 2 of Article X of the California Constitution.

101. Riparian rights in a stream or watercourse attach to, but to no more than so much of the flow thereof as may be required or used consistently with this and the next preceding section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing in this or the next preceding section shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which his land is riparian under reasonable methods of diversion and use, or of depriving any appropriator of water to which he is lawfully entitled.

102. All water within the State is the property of the people of the State, but the right to the use of water may be acquired by appropriation in the manner provided by law.

103. In the enactment of this code the Legislature does not intend thereby to effect any change in the law relating to water rights.

104. It is hereby declared that the people of the State have a paramount interest in the use of all the water of the State and that the State shall determine what water of the State, surface and underground, can be converted to public use or controlled for public protection.



105. It is hereby declared that the protection of the public interest in the development of the water resources of the State is of vital concern to the people of the State and that the State shall determine in what way the water of the State, both surface and underground, should be developed for the greatest public benefit.

106. It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation.

106.5. It is hereby declared to be the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses, but that no municipality shall acquire or hold any right to waste water, or to use water for other than municipal purposes, or to prevent the appropriation and application of water in excess of its reasonable and existing needs to useful purposes by others subject to the rights of the municipality to apply such water to municipal uses as and when necessity therefore exists.

Note: Stats. 1945, Ch. 1344, also contains the following:

Sec. 3. The purpose of this act is to effectuate the policy declared in Section 2 of this act and this act shall be liberally construed by the judicial and executive branches of the State Government to carry out its purpose.

106.7. (a) It is hereby declared to be the established policy of this state to support and encourage the development of environmentally compatible small hydroelectric projects as a renewable energy source, provided that the projects do not result in surface disturbances within the following sensitive areas:

(1) Any component of the California Wild and Scenic Rivers System or the National Wild and Scenic Rivers System.

(2) Any river designated for study pursuant to Section 5(a) of the National Wild and Scenic River Act (16 U.S.C. 1276(a)). This paragraph shall not apply to any river which, upon the completion of the study, is not included in the National Wild and Scenic Rivers System.

(3) Any state or federally designated wilderness area.

(4) Any areas designated as a "Critical Condor Habitat" by the United States Fish and Wildlife Service.

(b) State agencies shall not approve small hydroelectric development within the sensitive areas specified in subdivision (a).

(c) Significant adverse impacts associated with small hydroelectric projects shall be identified by those agencies responsible for the preparation of the environmental impact document.

(d) Emphasis on the development of small hydroelectric power generating facilities which are "qualifying small power production facilities" under Section 210 of the Public Utilities Regulatory Policies Act of 1978, shall be on existing dams, diversions, and canals with a sufficient drop so that power may be efficiently generated without significant environmental effects.

(e) For hydroelectric power generating facilities, the applicant shall demonstrate that project revenues will exceed project costs, including the cost of mitigation measures over the life of the project.

(f) Subdivisions (d) and (e) do not apply to projects with a nameplate capacity of less than 100 kilowatts.

(Amended by Stats.1985, Ch. 1272; Stats.1986, Ch. 807.)

107. The declaration of the policy of the State in this chapter is not exclusive, and all other or further declarations of policy in this code shall be given their full force and effect.

108. It is hereby declared to be the established policy of this State that in the development and completion of any general or coordinated plan prepared and published by the Department of Water Resources or any predecessor thereof or successor thereto, all uses, including needs of the area in which the water originates, of water shall be given consideration.

Whenever the Legislature authorizes the construction or acquisition by the State of any project which will develop water for use outside the watershed in which it originates, the Legislature shall at the same time consider the authorization and the construction or acquisition of such other works as may be necessary to develop water to satisfy such of the reasonable ultimate requirements of such watershed as may be needed at the time the export project is authorized or as will be needed within a reasonable time thereafter. The authorization with respect to such additional works may provide for state acquisition or construction, in whole or in part, of any such additional works, or financial assistance to other entities in connection with the acquisition or construction of such works, or a combination thereof.

109. (a) The Legislature hereby finds and declares that the growing water needs of the state require the use of water in an efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water and transferability of such rights. It is hereby declared to be the established policy of this state to facilitate the voluntary transfer of water and water rights where consistent with the public welfare of the place of export and the place of import.

(b) The Legislature hereby directs the Department of Water Resources, the State Water Resources Control Board, and all other appropriate state agencies to encourage voluntary transfers of water and water rights, including, but not limited to, providing technical assistance to persons to identify and implement water conservation measures which will make additional water available for transfer.

(Added by Stats. 1980, Ch.933 and Amended by Stats.1982, Ch. 867.)

110. (a) Notwithstanding any other provision of law, every water purveyor who sells, leases, rents, furnishes, or delivers water service to any person shall require, as a condition of new water service on and after January 1, 1992, that a suitable water meter to measure the water service shall be installed on the water service facilities in accordance with Chapter 8 (commencing with Section 500).



The cost of installation of the meter shall be paid by the user of the water, and any water purveyor may impose and collect charges for those costs.

(b) For purposes of subdivision (a), "water purveyor," "person," "water service," and "water meter" have the same meaning as defined in Article 2 (commencing with Section 510) of Chapter 8.

(c) Subdivision (a) applies only to potable water.

(d) Subdivision (a) does not apply to a community water system which serves less than 15 service connections used by yearlong residents or regularly serves less than 25 yearlong residents, or a single well which services the water supply of a single family residential home.

(Added by Stats. 1991, Ch. 407.)

CHAPTER 2. STATE ADMINISTRATION GENERALLY

Article 3. State Water Resources Control Board

174. The Legislature hereby finds and declares that in order to provide for the orderly and efficient administration of the water resources of the state it is necessary to establish a control board which shall exercise the adjudicatory and regulatory functions of the state in the field of water resources.

It is also the intention of the Legislature to combine the water rights and the water pollution and water quality functions of state government to provide for consideration of water pollution and water quality, and availability of unappropriated water whenever applications for appropriation of water are granted or waste discharge requirements or water quality objectives are established.

175. There is in the California Environmental Protection Agency the State Water Resources Control Board consisting of five members appointed by the Governor. One of the members appointed shall be an attorney admitted to practice law in this state who is qualified in the fields of water supply and water rights, one shall be a registered civil engineer under the laws of this state who is qualified in the fields of water supply and water rights, one shall be a registered professional engineer under the laws of this state who is experienced in sanitary engineering and who is qualified in the field of water quality, and one shall be qualified in the field of water quality. One of the above-appointed persons, in addition to having the specified qualifications, shall be qualified in the field of water supply and water quality relating to irrigated agriculture. One member shall not be required to have specialized experience.

Each member shall represent the state at large and not any particular portion thereof and shall serve full time. The board shall, to the extent possible, be composed of members from different regions of the state. The appointments so made by the Governor shall be subject to confirmation by the Senate in accordance with Article 2 (commencing with Section 1770) of Chapter 4 of Division 4 of Title 1 of the Government Code.

(Amended by Plan No. 1 of 1991.)

175.5. (a) No member of the board shall participate in any board action pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 which involves himself or any waste discharger with which he is connected as a director, officer or employee, or in which he has a direct personal financial interest within the meaning of Section 1120 of the Government Code.

(b) No board member shall participate in any proceeding before any regional board as a consultant or in any other capacity on behalf of any waste discharger.

(c) Upon request of any person or on his own initiative the Attorney General may file a complaint in the superior court for the county in which the board has its principal office alleging that a board member has knowingly violated this section and the facts upon which the allegation is based and asking that the member be removed from office. Further proceedings shall be in accordance as near as may be with rules governing civil actions. If after trial the court finds that the board member has knowingly violated this section it shall pronounce judgment that the member be removed from office.

176. The annual salary of the members of the board is provided for by Chapter 6 (commencing at Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code. Each member of the board shall receive the necessary traveling and other expenses incurred by him in the performance of his official duties out of appropriations made for the support of the board. When necessary the members of the board may travel within or without the State.

177. All members of the board shall be appointed for terms of four years. Vacancies shall be immediately filled by the Governor for the unexpired portion of the terms in which they occur.

178. The members of the board may be removed from office by the Legislature, by concurrent resolution adopted by a majority vote of all members elected to each house, for dereliction of duty or corruption or incompetency.

179. The board succeeds to and is vested with all of the powers, duties, purposes, responsibilities, and jurisdiction vested in the Department and Director of Public Works, the Division of Water Resources of the Department of Public Works, the State Engineer, the State Water Quality Control Board, or any officer or employee thereof, under Division 2 (commencing with Section 1000), except Part 4 (commencing with Section 4000) and Part 6 (commencing with Section 5900) thereof; and Division 7 (commencing with Section 1300) of this code, or any other law under which permits or licenses to appropriate water are issued, denied, or revoked or under which the functions of water pollution and quality control are exercised.

179.6. The board, or representatives authorized by the board to do so, may call, conduct or attend conferences or hearings, official or unofficial, within or without this state, or otherwise participate in such conferences or hearings with interested persons, agencies or officers, of this or any other state, or with the Congress of the



United States, congressional committees, or officers of the federal government, concerning any matter within the scope of the power and duties of the board.

179.7. As to any matter involving the United States, its departments or agencies, which is within the scope of the power and duties of the board, the board may represent the interest of the state or any county, city, state agency or public district upon their request, and to that end may correspond, confer and cooperate with the United States, its departments or agencies, and where necessary the board members, or authorized representatives, may travel either within or without the state.

180. (Repealed by Stats. 1984, Ch. 268.)

181. The board shall maintain its headquarters at Sacramento and may establish branch offices in such parts of the state as the board deems necessary. The board shall hold meetings at such times and at such places as shall be determined by it. The Governor shall designate the time and place for the first meeting of the board. Three members of the board shall constitute a quorum for the purpose of transacting any business of the board.

182. The Governor shall designate the chairman of the board from the membership of the board. The person so designated shall hold the office of chairman at the pleasure of the Governor. The board shall elect a vice chairman.

183. The board may hold any hearings and conduct any investigations in any part of the state necessary to carry out the powers vested in it, and for such purposes has the powers conferred upon heads of departments of the state by Article 2 (commencing with Section 11180), Chapter 2, Part 1, Division 3, Title 2 of the Government Code.

Any hearing or investigation by the board may be conducted by any member upon authorization of the board, and he shall have the powers granted to the board by this section, but any final action of the board shall be taken by a majority of all the members of the board, at a meeting duly called and held.

All hearings held by the board or by any member thereof shall be open and public.

184. The Department of Water Resources shall have an interest and may appear as a party in any hearing held by the board and may commence or appear in any judicial proceeding brought to inquire into the validity of any action, order, or decision of the board.

185. The board shall adopt rules for the conduct of its affairs in conformity, as nearly as practicable, with the provisions of Chapter 3.5 (commencing at Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

186. The board shall have such powers, and may employ such legal counsel and other personnel and assistance, as may be necessary or convenient for the exercise of its duties authorized by law.

For the purpose of administration, the board shall organize itself, with the approval of the Governor, in the manner it deems necessary properly to segregate and conduct the work of the board. The work of the board shall be divided into at least two divisions, known as the Division of Water Rights and the Division of Water Quality. The board shall appoint a chief of each division, who shall supervise the work thereof and act as technical adviser to the board on functions under his jurisdiction.

The Attorney General shall represent the board and the state in litigation concerning affairs of the board unless another state agency, represented by the Attorney General, is a party to the action. In such case the legal counsel of the board shall represent the board. Sections 11041, 11042, and 11043 of the Government Code are not applicable to the State Water Resources Control Board. The legal counsel of the board shall advise and furnish legal services, except representation in litigation, to the regional boards upon their request.

187. The board, regional water quality control boards, the Department of Water Resources, and other state agencies shall, to the fullest extent possible, exchange records, reports, material, and any other information relating to water, water rights, water pollution or quality, or any areas of mutual concern, to the end that unnecessary duplication of effort may be avoided.

188. The board may expend money appropriated for the administration of the laws the administration of which is committed to the board.

Such expenditures by the board shall be made in accordance with law in carrying on the work for which the appropriations were made.

188.5. The board shall publish biennial progress reports relating to the activities of the board and California regional water quality control boards.

189. (Renumbered Section 179 by Stats.1957, Ch. 1932.)

CHAPTER 2.5. MISCELLANEOUS POWERS OF DEPARTMENT

Article 2. Surveys, Investigations, and Distribution of Water

230. The department, either independently or in cooperation with any person or any county, state, federal, or other agency, or upon the request of the State Water Resources Control Board, to the extent funds are allocated therefor, shall conduct surveys and investigations relating to the reclamation of water from wastes for beneficial purposes, including but not limited to the determination of quantities of such water presently wasted, and possibilities of use of such water for recharge of underground storage or for agricultural or industrial uses.

(Amended by Stats.1992, Ch. 711.)

237. (Repealed by Stats.1992, Ch. 711.)



Article 3. Proceedings to Prevent Waste or Unreasonable Use

275. The department and board shall take all appropriate proceedings or actions before executive, legislative, or judicial agencies to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state.

Article 4. Waste from Artesian Wells

300. For the purposes of this article, an artesian well is any artificial hole made in the ground through which water naturally flows from subterranean sources to the surface of the ground for any length of time.

(Added by Stats.1943, Ch. 368.)

301. For the purposes of this article, waste is the causing, suffering, or permitting any water flowing from an artesian well, to run either:

(a) Into any natural watercourse or channel, or into any bay or pond, unless the water is used thereafter for irrigation or domestic use.

(b) Into any street, road, or highway.

(c) Upon the land of any person or upon the public land of the United States or of the State, unless it is used thereon for irrigation, domestic use, or the propagation of fish.

(Added by Stats.1943, Ch. 368.)

302. The use of any water flowing from an artesian well for the irrigation of land, whenever over 5 per cent of the water received on the land for irrigation purposes is permitted to escape from the land, is waste within the meaning of this article.

(Added by Stats.1943, Ch. 368.)

303. Nothing in this article prevents the running of artesian water into an artificial pond or storage-reservoir, if the water is used thereafter for a beneficial use.

(Added by Stats.1943, Ch. 368.)

304. A beneficial use under the next preceding section shall not exceed one tenth of one miner's inch of water per acre, perpetual flow, but her person using the water may cumulate that amount within any period of each year.

(Added by Stats.1943, Ch. 368.)

305. Any artesian well which is not capped or equipped with a mechanical appliance which will readily and effectively arrest and prevent the flow of any water from the well is a public nuisance.

(Added by Stats.1943, Ch. 368.)

306. The owner, tenant, or occupant of the land upon which a well which is a public nuisance under the next preceding section is situated, who causes, permits, or suffers such public nuisance to exist or continue is guilty of a misdemeanor.

(Added by Stats.1943, Ch. 368.)

- 307.** Any person owning, possessing, or occupying any land upon which is situated an artesian well, who causes, suffers, or permits water unnecessarily to flow from the well or to go to waste is guilty of a misdemeanor.
(Added by Stats.1943, Ch. 368.)
- 308.** Each day's continuance of waste constitutes a new offense.
(Added by Stats.1943, Ch. 368.)
- 309.** Any person who violates any of the provisions of this article is punishable for each offense by a fine of not less than fifty dollars (\$50) and not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than six months, or by both.
(Added by Stats.1943, Ch. 368; Amended by Stats.1983, Ch. 1092.)
- 310.** All prosecutions for the violation of any of the provisions of this article shall be instituted in the justice court or municipal court of the county in which the well is situated.
(Added by Stats.1943, Ch. 368; Amended by Stats.1953, Ch. 374.)
- 311.** Any fine imposed under the provisions of this article may be collected as in other criminal cases, and the justice may also issue an execution upon the judgment therein rendered, which may be enforced and collected as in civil cases.
(Added by Stats.1943, Ch. 368.)

CHAPTER 3.5. WATER CONSERVATION PROGRAMS

- 375.** (a) Notwithstanding any other provision of the law, any public entity which supplies water at retail or wholesale for the benefit of persons within the service area or area of jurisdiction of the public entity may, by ordinance or resolution adopted by a majority of the members of the governing body after holding a public hearing upon notice and making appropriate findings of necessity for the adoption of a water conservation program, adopt and enforce a water conservation program to reduce the quantity of water used by those persons for the purpose of conserving the water supplies of the public entity.
- (b) With regard to water delivered for other than agricultural uses, the ordinance or resolution may specifically require the installation of water-saving devices which are designed to reduce water consumption. The ordinance or resolution may also encourage water conservation through rate structure design.
- (c) For the purposes of this section, "public entity" means a city, whether general law or chartered, county, city and county, special district, agency, authority, any other municipal public corporation or district, or any other political subdivision of the state.
(Amended by Stats.1993, Ch. 313.)



375.5. (a) A public entity, as defined by Section 375, may undertake water conservation and public education programs in conjunction with school districts, public libraries, or any other public entity.

(b) A public entity may take into account any programs undertaken pursuant to this section in a rate structure design implemented pursuant to Section 375.

(c) The Legislature finds and declares that a program undertaken pursuant to this section is in the public interest, serves a public purpose, and will promote the health, welfare, and safety of the people of the state.

(Added by Stats.1994, Ch. 205.)

376. Any ordinance or resolution adopted pursuant to Section 375 is effective upon adoption. Within 10 days after its adoption, the ordinance or resolution shall be published pursuant to Section 6061 of the Government Code in full in a newspaper of general circulation which is printed, published, and circulated in the district. If there is no such newspaper the ordinance or resolution shall be posted within 10 days after its adoption in three public places within the district.

(Added by Stats.1977, Ch. 634.)

377. From and after the publication or posting of any ordinance or resolution pursuant to Section 376, violation of a requirement of a water conservation program adopted pursuant to Section 376 is a misdemeanor. Upon conviction thereof such person shall be punished by imprisonment in the county jail for not more than 30 days, or by fine not exceeding one thousand dollars (\$1,000), or by both.

(Added by Stats.1977, Ch. 634; Amended by Stats.1983, Ch. 1092.)

378. A public entity may enter into agreements with other public entities, businesses, community associations, or private entities to provide water conservation services and measures and materials for implementing water conservation programs adopted pursuant to this chapter.

(Added by Stats.1995, Ch. 31.)

CHAPTER 3.6.

DEFERENCE TO DECISIONS BY LOCAL OR REGIONAL AGENCIES

380. The Legislature hereby finds and declares as follows:

(a) The various regions of the state differ widely in the availability of water supplies and in the need for water to meet beneficial uses.

(b) Decisions regarding operations to meet water needs can depend in part upon regional differences.

(c) Many water management decisions can best be made at a local or regional level, to the end that local and regional operational flexibility will maximize efficient statewide use of water supplies.

(d) The authority granted by this chapter to local and regional public agencies, as defined in subdivision (a) of Section 65930 of the Government Code and not including federal agencies, is in furtherance of the policy declared in Section 2 of Article X of the California Constitution and in Section 109.

(Added by Stats.1982, Ch. 867.)



381. The authority of local or regional public agencies pursuant to this chapter shall control over any other provision of law which contains more stringent limitations on the authority of a particular public agency to serve water for use outside the agency, to the extent those other laws are inconsistent with the authority granted herein.

(Added by Stats.1982, Ch. 867.)

382. (a) Notwithstanding any other provision of law, every local or regional public agency authorized by law to serve water to the persons or entities within the service area of the agency may sell, lease, exchange, or otherwise transfer, for use outside the agency, either or both of the following:

(1) Water that is surplus to the needs of the water users of the agency.

(2) Water, the use of which is voluntarily foregone, during the period of the transfer, by a water user of the agency.

(b) This chapter does not prohibit or restrict the transfer of water or water rights by local or regional public agencies pursuant to other provisions of law.

(Added by Stats.1982, Ch. 867; Amended by Stats.1993, Ch. 188.)

383. For the purposes of this chapter, water that is surplus to the needs of the agency's water users shall mean any of the following:

(a) Water, to which the right is held by the agency pursuant to an appropriation made under the Water Commission Act or Division 2 (commencing with Section 1000), which the agency finds will be in excess of the needs of water users within the agency for the duration of the transfer.

(b) Water, to which the right is held by the agency pursuant to an appropriation made under the Water Commission Act or Division 2 (commencing with Section 1000), of which any water user agrees with the agency, upon mutually satisfactory terms, to forego use for the duration of the transfer.

(c) Water, to which the right is held by a water user within the agency pursuant to an appropriation made under the Water Commission Act or Division 2 (commencing with Section 1000) where the water user and the agency agree, upon mutually satisfactory terms, that the water user will forego use for the period of time specified in the agreement and that the agency shall act as agent for the water user to effect the transfer.

(Added by Stats.1982, Ch. 867.)

384. Prior to serving water to any person for use outside the agency, the agency shall comply with all provisions of the general laws of this state relating to the transfer of water or water rights, including, but not limited to, procedural and substantive requirements governing any change in point of diversion, place of use, or purpose of use due to such transfer.

(Added by Stats.1982, Ch. 867.)

385. No water may be transferred pursuant to this chapter for use within the boundaries of a local or regional public agency that furnishes the same water service to the transferee without the prior consent of that agency.

(Added by Stats.1982, Ch. 867.)



386. The board may approve any change associated with a transfer pursuant to this chapter only if it finds that the change may be made without injuring any legal user of the water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and does not unreasonably affect the overall economy of the area from which the water is being transferred.

A petitioner requesting a change which is subject to this section shall pay to the board a fee which shall be in an amount determined by the board to cover the reasonable costs of the board in evaluating and processing the petition.

(Added by Stats.1982, Ch. 867.)

387. Any agreement for the transfer of water under the provisions of this chapter shall be for a period not to exceed seven years unless a longer period of time is mutually agreed upon by the agency and the transferee.

(Added by Stats.1982, Ch. 867; Amended by Stats.1986, Ch. 364.)

CHAPTER 6. WATER REUSE

Article 1. Short Title

460. This chapter shall be known as and may be cited as the Water Reuse Law of 1974.

(Added by Stats.1974, Ch. 1128; Amended by Stats.1994, Ch.724.)

Article 2. Declaration of Policy

461. It is hereby declared that the primary interest of the people of the state in the conservation of all available water resources requires the maximum reuse of reclaimed water in the satisfaction of requirements for beneficial uses of water.

(Added by Stats.1974, Ch. 1128; Amended by Stats.1994, Ch. 724.)

Article 3. Action by the Department of Water Resources

462. The department shall conduct studies and investigations on the availability and quality of wastewater and the uses of reclaimed water for beneficial purposes, including, but not limited to, groundwater recharge, municipal and industrial use, irrigation use, and cooling for thermal electric powerplants.

(Added by Stats.1974, Ch. 1128; Amended by Stats.1994, Ch. 724.)

463. The department shall study and investigate the technology of the reuse of reclaimed water and further the development of the technology of the reclamation of water.

(Added by Stats.1974, Ch. 1128; Amended by Stats.1994, Ch. 724.)

464. (Repealed by Stats.1992, Ch. 711.)

465. The department may assist local agencies and public utilities providing water service in applying for, and in obtaining approval of, federal and state



funding and permits for cost-effective water reclamation projects and shall confer and cooperate with the board during the application and approval process.

(Added by Stats.1990, Ch. 836.)

CHAPTER 7. WATER TRANSFER

(Added by Stats.1986, Ch. 970)

Article 1. Short Title

470. This chapter shall be known as and may be cited as the Costa-Isenberg Water Transfer Act of 1986.

471-473. (Repealed by Stats.1980, Ch. 693.)

Article 2. Declaration of Policy

475. The Legislature hereby finds and declares that voluntary water transfers between water users can result in a more efficient use of water, benefiting both the buyer and the seller.

The Legislature further finds and declares that transfers of surplus water on an intermittent basis can help alleviate water shortages, save capital outlay development costs, and conserve water and energy.

The Legislature further finds and declares that it is in the public interest to conserve all available water resources, and that this interest requires the coordinated assistance of state agencies for voluntary water transfers to allow more intensive use of developed water resources in a manner that fully protects the interests of other entities which have rights to, or rely on, the water covered by a proposed transfer.

Article 3. State Assistance

480. The department shall establish an ongoing program to facilitate the voluntary exchange or transfer of water and implement the various state laws that pertain to water transfers. The department shall seek to facilitate these transactions only if the water to be transferred is already developed and being diverted from a stream for beneficial use or has been conserved.

481. The department shall create and maintain a list of entities seeking to enter into water supply transfers, leases, exchanges, or other similar arrangements. In addition, the department shall maintain a list of the physical facilities which may be available to carry out water supply transfers.

482. The department shall prepare a water transfer guide which shall include, but not be limited to, all of the following:

(a) A review of existing and appropriate state and federal laws that pertain to water transfers, water markets, or water rights.

(b) A list of persons or public agencies throughout the state involved in water management who could be helpful to those seeking assistance to transfer water.

(c) Information and resources which could be used to identify potential third-party impacts and mitigation alternatives, including economic, environmental, and legal issues related to the transfer of water.

(d) A description of the services available to water users from the department.

483. The department shall consult and coordinate its activities with other state boards, departments, agencies, or offices whose assistance may be desirable or necessary in carrying out the purposes of this chapter.

Note: Statutes of 1986, Ch. 970 also contains the following provision:

Sec. 2. The Department of Water Resources shall report to the Chairperson of the Agriculture and Water Resources Committee of the Senate and the Chairperson of the Water, Parks, and Wildlife Committee of the Assembly, no later than July 1, 1987, its findings and recommendations as to any changes in existing law or state policy necessary to improve water management by the use of voluntary water transfers.

(Added by Stats. 1986, Ch. 970)

484. (a) The temporary transfer of any water or water right that otherwise would have been consumptively used or stored by the transferor in the absence of the temporary transfer, does not in any way prejudice the transferor's right to the use of the water in the future.

(b) "Consumptively used," for purposes of this section, means the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.

(Added by Stats. 1991-92, Ch. 12.)

DIVISION 2. WATER

PART 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS AND INTERPRETATION OF DIVISION

1000. As used in this division, "water" includes the term "use of water."

1001. Nothing in this division shall be construed as giving or confirming any right, title, or interest to or in the corpus of any water.

1002. This division shall not be held to bestow upon any person, except as expressly provided in it, any right where no such right existed prior to the time this division takes effect.

1003. As used in this division, "Water Commission Act" means Chapter 586, Statutes of 1913, as amended.

1003.5. As used in this division, "board" means the State Water Resources Control Board.

1004. As used in this division, "useful or beneficial purposes" shall not be construed to mean the use in any one year of more than 2-1/2 acre-feet of water per acre in the irrigation of uncultivated areas of land not devoted to cultivated crops.

1005. Nothing in this division shall be construed as depriving any city, city and county, municipal water district, irrigation district, or lighting district of the benefit of any law heretofore or hereafter passed for their benefit in regard to the appropriation or acquisition of water. Any right to the water of any stream which flows along a boundary of the State and which is the subject of an interstate compact to which the State is a party, to the extent such right relates to quantities of water which the United States has, under the authority of an act of Congress, contracted to deliver to any municipal corporation, political subdivision, or public district in the State, from storage constructed by the United States on any such stream, shall not be subject to any requirement or limitation provided by law relating to the time within which the construction of works for the use of such water shall be commenced, carried on, or completed, or within which such water shall be put to use, or relating to the continuity of use of such water; and water contracted to be delivered from such stream, shall be reserved to the contractor therefor without diminution by reason of the contractor's failure to apply such water to use during an period, and shall not be subject to appropriation by any other than such contractor.

1005.1. Cessation of or reduction in the extraction of ground water by the owner of a right to extract, as the result of the use of an alternate supply of water from a nontributary source, shall be and is deemed equivalent to, and for purposes of establishing and maintaining any right to extract the ground water shall be construed to constitute, a reasonable beneficial use of the ground water to the extent and in the amount that water from the alternate source is applied to reasonable beneficial use, not exceeding, however, the amount of such reduction. Any such user of water from an alternate nontributary source who seeks the benefit of this section, shall file with the board, on or before December 31st of each calendar year, a statement of the amount of water from such source so applied to reasonable beneficial use pursuant to the provisions of this section during the next preceding water year (November 1st to October 31st), and such user cannot claim the benefit of this section for any water year for which such statement is not so filed.

"Ground water," for the purpose of this section and of Sections 1005.2 and 1005.4, means water beneath the surface of the ground, whether or not flowing through known and definite channels.

The term "nontributary source," as used in this section, shall be deemed to include water imported from another watershed, or water conserved and saved in the watershed by a water conservation plan or works without which such water



of the same watershed would have wasted, or would not have reached the underground source of supply of the owner relying upon this section.

1005.2. Cessation of or reduction in the extraction of ground water, to permit the replenishment of such ground water by the use of water from an alternate nontributary source, is hereby declared to be a reasonable beneficial use of the ground water to the extent and in the amount that water from such alternate source is applied to beneficial use, not exceeding, however, the amount of such reduction. No lapse, reduction or loss of any right in ground water, shall occur under such conditions. Any such user of water from an alternate source who seeks the benefit of this Section 1005.2 with respect to the use of such water occurring prior to the effective date of this section, shall file with the board, within ninety (90) days from said effective date, a statement of the amounts of reduction in the extraction of ground water as the result of water from said alternate source having been so applied to reasonable beneficial use prior to said effective date to permit the replenishment of such ground water and said amounts shall be segregated and shown for each water year (November 1st to October 31st) during which such use occurred prior to the effective date of this section. Any such user of water from an alternate source who seeks the benefit of this Section 1005.2 with respect to the use of such water occurring subsequent to the effective date of this section, shall file with the board, on or before December 31st of each calendar year, a statement of the amount of reduction in the extraction of ground water as the result of water from said alternate source having been so applied to reasonable beneficial use during the next preceding water year (November 1st to October 31st) to permit the replenishment of such ground water. Such user cannot claim the benefit of this section for any water year for which such statement is not so filed.

The provisions of this section apply only as to the cessation of, or reduction in, the extraction of ground water within that area in this state defined by the exterior boundaries of the Counties of San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Imperial, Riverside, and San Bernardino.

The term "nontributary source" as used in this section shall be deemed to include water imported from another watershed or water conserved and saved in the watershed by a water conservation plan or works without which such water of the same watershed would have wasted, or would not have reached the underground source of supply of the owner relying upon this section.

1005.3. During the pendency of an action to adjudicate substantially all water rights in a ground water basin situated in whole or in part within the Tehachapi-Cummings County Water District in Kern County, and until the date of judgment therein becomes final, which finality may be subject to any reserved jurisdiction of the court, the failure by any owner of water rights in and to such ground water basin to pump or extract therefrom the full quantity of water representing such water rights which he may be determined to have had as of the date of commencement of the action, shall not result in a loss of any portion of such water rights. The provisions of this section shall apply to any such failure to

pump or extract in any water year, calendar year, or other year ending after the effective date of this section, whether or not said action was commenced prior to that effective date.

This special provision is necessary because there are special and peculiar circumstances applicable to the ground water basins lying wholly or partially within the Tehachapi-Cummings County Water District. There are three such ground water basins, commonly referred to as the Tehachapi Basin, the Brite Basin and the Cummings Basin. The alluvial fill in each of said basins is very shallow when contrasted to most other ground water basins in this state. It is necessary to induce those pumpers who can possibly do so to reduce their pumping from the basins if sufficient ground water reserves are to be maintained for preservation of the existing economy until supplemental water is available from the State Water Facilities. Actions to adjudicate substantially all water rights have been filed as to each of those basins.

1005.4. (a) Cessation of or reduction in the extraction of ground water, to permit the replenishment of such ground water by the use of water from an alternate nontributary source, is hereby declared to be a reasonable beneficial use of the ground water to the extent and in the amount that water from such alternate source is applied to beneficial use, not exceeding, however, the amount of such reduction. No lapse, reduction or loss of any right in ground water, shall occur under such conditions.

(b) Any such user of water from an alternative source may file with the board, on or before December 31st of each calendar year, a statement of the amount of reduction in the extraction of ground water as a result of water from the alternative source having been so applied to reasonable beneficial use during the next preceding water year (October 1st to September 30th) to permit replenishment of such ground water. However, failure to file such a statement shall in no way affect the right of a user to claim the benefit of this section.

(c) The provisions of this section apply only as to the cessation of, or reduction in, the extraction of ground water within that area in this state defined by the exterior boundaries of every county, except the Counties of San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Imperial, Riverside, and San Bernardino.

(d) The term "nontributary source," as used in this section, shall be deemed to include water imported from another watershed or water conserved and saved in the watershed by a water conservation plan or works without which such water of the same watershed would have wasted, or would not have reached the underground source of supply of the owner relying upon this section.

1006. Nothing in this division affects or limits in any manner whatsoever the right or power of any municipality which, prior to December 19, 1914, had appropriated or acquired water for municipal purposes, to use, sell, or otherwise dispose of such water either within or without its limits for domestic, irrigation, or other purposes in accordance with laws in effect on that date.



1007. Nothing in this division shall be construed to deprive the State or any city, city and county, municipal water district, irrigation district, lighting district, political subdivision, or any person of any rights to acquire property by eminent domain proceedings.

1008. Nothing in this division shall be construed as depriving any person of the right of appeal conferred under the laws of this State.

1009. Any supplier of water in this state for municipal use, including the state, or any city, county, city and county, district, individual, partnership, corporation, or any other entity, may undertake a water conservation program to reduce water use and may require, as a condition of new service, that reasonable water-saving devices and water reclamation devices be installed to reduce water use.

1009.5. (a) A water district and the district attorney of any county in which the water district is located may enter into an agreement authorizing the attorney for the water district to act as a special prosecutor appointed by and under the supervision and direction of the district attorney for the purpose of prosecuting a violation of an ordinance of the district or a violation of a statute that is a misdemeanor or an infraction, or a violation of a resolution or ordinance adopted pursuant to Section 375, subject to all of the following limitations:

(1) The ordinance, resolution, or statute relates to water pollution, including waste water and stormwater, or to water conservation.

(2) The district attorney shall prescribe the scope of, and any limitations on, the subpoena power of the attorney for the water district.

(3) The district attorney may designate any ordinance, resolution, or statute that the attorney for the water district is authorized to prosecute.

(b) A water district, for purposes of this section, means a water district as defined in Section 20200.

(Added by Stats.1992, Ch. 766.)

1010. (a) (1) The cessation of, or reduction in, the use of water under any existing right regardless of the basis of right, as the result of the use of recycled water, desalinated water, or water polluted by waste to a degree which unreasonably affects the water for other beneficial uses, is deemed equivalent to, and for purposes of maintaining any right shall be construed to constitute, a reasonable beneficial use of water to the extent and in the amount that the recycled, desalinated, or polluted water is being used not exceeding, however, the amount of such reduction.

(2) No lapse, reduction, or loss of any existing right shall occur under a cessation of, or reduction in, the use of water pursuant to this subdivision, and, to the extent and in the amount that recycled, desalinated, or polluted water is used in lieu of water appropriated by a permittee pursuant to Chapter 6 (commencing with Section 1375) of Part 2, the board shall not reduce the appropriation authorized in the user's permit.

(3) The use of recycled, desalinated, or polluted water constitutes good cause under Section 1398 to extend the period specified in a permit for application of appropriated water to beneficial use to the extent and in the amount that



recycled, desalinated, or polluted water is used. The extension by the board shall be granted upon the same terms as are set forth in the user's permit, and for a period sufficient to enable the permittee to perfect his appropriation, while continuing to use recycled, desalinated, or polluted water.

(4) The board, in issuing a license pursuant to Article 3 (commencing with Section 1610) of Chapter 9 of Part 2, shall not reduce the appropriation authorized by permit, to the extent and in the amount that reduction in a permittee's use, during the perfection period, including any extension as provided in this section, has resulted from the use of recycled, desalinated, or polluted water in lieu of the permittee's authorized appropriation.

(5) The board may require any user of water who seeks the benefit of this section to file periodic reports describing the extent and amount of the use of recycled, desalinated, or polluted water. To the maximum extent possible, the reports shall be made a part of other reports required by the board relating to the use of water.

(6) For purposes of this section, the term "recycled water" has the same meaning as in Division 7 (commencing with Section 13000).

(b) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of the use of recycled, desalinated, or polluted water as described in subdivision (a), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

(Added by Stats.1977, Ch. 1117; Amended by Stats.1991, Ch. 1161.; Amended by Stats.1995, Ch. 28.)

1011. (a) When any person entitled to the use of water under an appropriative right fails to use all or any part of the water because of water conservation efforts, any cessation or reduction in the use of the appropriated water shall be deemed equivalent to a reasonable beneficial use of water to the extent of the cessation or reduction in use. No forfeiture of the appropriative right to the water conserved shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914.

The board may require that any user of water who seeks the benefit of this section file periodic reports describing the extent and amount of the reduction in water use due to water conservation efforts. To the maximum extent possible, the reports shall be made a part of other reports required by the board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this section.

For purposes of this section, the term "water conservation" shall mean the use of less water to accomplish the same purpose or purposes of use allowed under the existing appropriative right. Where water appropriated for irrigation purposes is not used by reason of land fallowing or crop rotation, the reduced usage shall be deemed water conservation for purposes of this section.

(b) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of water conservation efforts as described in



subdivision (a), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

(c) Notwithstanding any other provision of law, upon the completion of the term of a water transfer agreement, or the right to the use of that water, that is available as a result of water conservation efforts described in subdivision (a), the right to the use of the water shall revert to the transferor as if the water transfer had not been undertaken.

(Added by Stats. 1979, Ch. 1112; Amended by Stats. 1982, Ch. 869; and Stats. 1996, Ch. 408)

Text of Section operative until January 1, 2007.

1011.5. (a) The Legislature hereby finds and declares that the growing water needs of the state require the use of water in an efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water. The Legislature further declares that it is the policy of this state to encourage conjunctive use of surface water and groundwater supplies and to make surface water available for other beneficial uses. The Legislature recognizes that the substantial investments that may be necessary to implement and maintain a conjunctive use program require certainty in the continued right to the use of alternate water supplies.

(b) When any holder of an appropriative right fails to use all or any part of the water as a result of conjunctive use of surface water and groundwater involving the substitution of an alternate supply for the unused portion of the surface water, any cessation of, or reduction in, the use of the appropriated water shall be deemed equivalent to a reasonable and beneficial use of water to the extent of the cessation of, or reduction in, use, and to the same extent as the appropriated water was put to reasonable and beneficial use by that person. No forfeiture of the appropriative right to the water for which an alternate supply is substituted shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914.

The state board may require any holder of an appropriative right who seeks the benefit of this section to file periodic reports describing the extent and amount of the reduction in water use due to substitution of an alternate supply. To the maximum extent possible, the reports shall be made a part of other reports required by the state board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this section.

(c) Substitution of an alternate supply may be made only if the extraction of the alternate supply conforms to all requirements imposed pursuant to an adjudication of the groundwater basin, if applicable, and meets one of the following conditions:

(1) Except as specified in paragraph (2), is from a groundwater basin for which the operating safe yield is not exceeded prior to the extraction of the

alternate supply and does not cause the operating safe yield of the groundwater basin from which the alternate supply is obtained to be exceeded.

(2) Is from the Eastern San Joaquin County Basin, as described on pages 38 and 39 of the Department of Water Resources Bulletin No. 118-80, for which the operating safe yield is exceeded prior to the extraction of the alternative supply, if all of the following requirements are met:

(A) The conjunctive use program is operated in accordance with a local groundwater management program that complies with the requirements of this section.

(B) The groundwater management program established requirements for the extraction of groundwater and is approved by a joint powers authority that meets the requirements of subparagraph (C).

(C) The joint powers authority includes each water agency overlying the contemplated points of groundwater extraction and each water agency that will share in the benefits to be derived from the local groundwater management program.

(D) By either of the following methods, the overdraft of the groundwater basin underlying the point of extraction has been reduced prior to the commencement of extraction:

(i) Elimination of a volume of existing groundwater extractions in excess of the proposed new extraction.

(ii) Recharge of the groundwater basin with a volume of water in excess of the proposed new extraction.

(E) The operation of that conjunctive use program ensures that the overdraft of the groundwater basin continues to be reduced.

(d) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of conjunctive use of surface water and groundwater, involving substitution of an alternate supply, as described in subdivision (b) and (c), may be sold, lease, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

(e) As used in this section, "substitution of an alternate supply" means replacement of water diverted under an appropriative right by the substitution of an equivalent amount of groundwater.

(f) This section does not apply to the Santa Ana River watershed.

(g) This section does not apply in any area where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses established in a water quality control plan adopted or approved by the state board pursuant to, and to the extent authorized by, Section 13170 or 13245, which designates areas where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses.

(h) This section shall not be construed to increase or decrease the jurisdiction of the state board over groundwater resources, or to confer on the state board jurisdiction over groundwater basins over which it does not have jurisdiction pursuant to other provisions of law.

(i) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2007, deletes or extends that date.

(Added by Stats. 1992, Ch. 779.)

Text of Section Operative January 1, 2007

1011.5. (a) The Legislature hereby finds and declares that the growing water needs of the state require the use of water in a efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water. The Legislature further declares that it is the policy of this state to encourage conjunctive use of surface water and groundwater supplies and to make surface water available for other beneficial uses. The Legislature recognizes that the substantial investments that may be necessary to implement and maintain a conjunctive use program require certainty in the continued right to the use of alternate water supplies.

(b) When any holder of an appropriative right fails to use all or any part of the water as a result of conjunctive use of surface water and groundwater involving the substitution of an alternate supply for the unused portion of the surface water, any cessation of, or reduction in, the use of the appropriated water shall be deemed equivalent to a reasonable and beneficial use of water to the extent of the cessation of, or reduction in, use, and to the same extent as the appropriated water was put to reasonable and beneficial use by that person. No forfeiture of the appropriative right to the water for which an alternate supply is substituted shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914.

The state board may require any holder of an appropriative right who seeks the benefit of this section to file periodic reports describing the extent and amount of the reduction in water use due to substitution of an alternate supply. To the maximum extent possible, the reports shall be made a part of other reports required by the state board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this section.

(c) Substitution of an alternate supply may be made only if the extraction of the alternate supply meets all of the following condition:

(1) Is from a groundwater basin for which the operating safe yield is not exceeded prior to the extraction of the alternate supply.

(2) Does not cause the operating safe yield of the groundwater basin from which the alternate supply is obtained to be exceeded.

(3) Conforms to all requirements imposed pursuant to any adjudication of the groundwater basin.

(4) Is consistent with any applicable groundwater management plan.

(5) Is approved by the water supplier whose service area the water is to be transferred from, if the groundwater basin has not been adjudicated or if a ground- water management plan has not been adopted.

(d) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of conjunctive use of surface water and groundwater

involving substitution of an alternate supply, as described in subdivisions (b) and (c), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

(e) As used in this section, "substitution of an alternate supply" means replacement of water diverted under an appropriative right by the substitution of an equivalent amount of groundwater.

(f) This section does not apply to the Santa Ana watershed.

(g) This section does not apply in any area where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses established in a water quality control plan adopted or approved by the state board pursuant to, and to the extent authorized by, Section 13170 or 13245, which designates areas where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses.

(h) This section shall not be construed to increase or decrease the jurisdiction of the state board over groundwater resources, or to confer on the state board jurisdiction over groundwater basins over which it does not have jurisdiction pursuant to other provisions of law.

(i) This section shall become operative on January 1, 2007.

(Added by Stats.1992, Ch. 779.)

1012. Notwithstanding any other provision of law, where any person, public agency, or agency of the United States undertakes any water conservation effort, either separately or jointly with others entitled to delivery of water from the Colorado River under contracts with the United States, which results in reduced use of Colorado River water within the Imperial Irrigation District, no forfeiture, diminution, or impairment of the right to use the water conserved shall occur, except as set forth in the agreements between the parties and the United States.

Note: Ch. 429, Stats.1984 also contains the following:

Sec. 2. The Legislature finds and declares that the enactment of Section 1012 of the Water Code is intended to clarify and make specific existing California law in regard to water conservation measures which may be taken within the Imperial Valley. In enacting Section 1012 of the Water Code, it is not the intent of the Legislature to alter the relationship of state and federal law, as each may apply to the distribution and use of Colorado River water.

CHAPTER 1.5 WATER LEASES

1013. The Imperial Irrigation District, acting under a contract with the United States for diversion and use of Colorado River water or pursuant to the Constitution or to this chapter, or complying with an order of the Secretary of the Interior, a court, or the board, to reduce through conservation measures, the volume of the flow of water directly or indirectly into the Salton Sea, shall not be held liable for any effects to the Salton Sea or its bordering area resulting from the conservation measures.



This section shall not be construed to exempt the Imperial Irrigation District from any requirements established under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(Added by Stats.1987, Ch. 629.)

1020. Water may be leased for a period not to exceed five years to assist water conservation efforts pursuant to the terms and conditions of this chapter. The terms and conditions of this chapter are not applicable to water leases or transfers governed by other provisions of law.

(Added by Stats.1991, Ch. 847.)

1021. (a) The water subject to a water lease agreement shall be water that is subject to a water right of the lessor. The amount of water leased shall not exceed 25 percent of the water that would have been applied or stored by the lessor in the absence of the lease agreement in any given hydrological year.

(b) Each lease agreement shall include enforceable terms which will ensure that the water lease will not injure any legal user of water and will not unreasonably affect fish, wildlife, or other instream beneficial uses.

(c) This chapter applies only to surface water appropriated pursuant to the Water Commission Act (Chapter 586 of the Statutes of 1913, as amended) or this code, or to water appropriated prior to December 19, 1914.

(Added by Stats.1991, Ch. 847.)

1022. If the water subject to the lease is held by a water district, a water company, or a mutual water company, hereafter collectively referred to as the district, the following provisions apply:

(a) The governing body of the district may, by a resolution adopted and entered in its minutes, determine that the district should lease water pursuant to this chapter, or, if otherwise required by law, determine that an election should be held to lease water pursuant to this chapter. The district shall administer any water lease and determine whether water is in excess of the needs of the district and is available for a lease.

(b) Any water lease administered by the district shall include provisions to achieve all of the following:

(1) Establish a schedule for district water users to provide written notice of the intention to participate in a water lease.

(2) Establish a minimum price for the water available for leasing to maintain the financial integrity of the district and enter into leases for that water at market values at or above the minimum price.

(3) Annually distribute the net monetary proceeds to water users in the district who have participated in the water leases, according to district water allocation policies, after first deducting district costs. These costs include, but are not limited to, the cost of the water, whether or not water is delivered, the costs of conveyance, distribution and development facilities, lease administration, and other appropriate district costs apportioned to water users in the district who forego the use of district water to participate in the water lease.



(c) Participation in a water lease administered by the district pursuant to this section is deemed to be a public service generally provided by the public body or board for purposes of paragraph (3) of subdivision (a) of Section 1091.5 of the Government Code.

(Added by Stats.1991, Ch. 847; Amended by Stats.1992, Ch. 56.)

1024. (a) Nothing in this chapter authorizes the sale of any water right or the modification of any water right or contract.

(b) No right in any water, water contract, or water right shall be acquired by a use permitted under this chapter.

(c) (1) When any person entitled to the use of water under an appropriative right fails to use all or any part of the water because of water conservation efforts and leases that conserved water under this chapter, any such cessation of, or reduction in, the use of the appropriated water that is leased is deemed equivalent to a reasonable beneficial use of water to the extent of that cessation of, or reduction in, use. No forfeiture of the appropriative right to the water conserved shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act (Chapter 586 of the Statutes of 1913, as amended) or this code, or to water appropriated prior to December 19, 1914.

(2) The state board may require any lessor of water who seeks the benefit of this chapter to file periodic reports describing the extent and amount of the reduction in water use due to water conservation efforts. To the maximum extent possible, the reports shall be made a part of other reports required by the state board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this chapter.

(3) For purposes of this chapter, "water conservation" means the use of less water to accomplish the same purpose or purposes of use allowed under the existing appropriative right. Where water appropriated for irrigation purposes is not used by reason of land fallowing or crop rotation, the reduced usage shall be deemed water conservation for purposes of this section.

(Added by Stats.1991, Ch. 847.)

1024.5. This chapter does not limit any review of the lessee's use of the leased water.

(Added by Stats.1991, Ch. 847.)

1025. If the lessor or lessee is a water district, the water lessor shall file a notice with the state board of the water lease agreement and include in the notice all of the following:

- (a) A copy of the lease agreement.
- (b) Any water permit or license number.
- (c) A description of the environmental conditions in the lease, permit, and license which protect fish and wildlife.
- (d) A statement of how the lease will assist water conservation efforts of the lessor.
- (e) An agreement undertaken by the lessor and the lessee which specifies how the environmental protection terms and conditions in the permit,

license, or lease, and the applicable conditions established pursuant to Section 1029 for the permit, license, or other water right, will be complied with for the duration of the lease.

(Added by Stats.1991, Ch. 847.)

1025.5. (a) If both the lessor and lessee are private parties, the lessor shall file an application with the state board for approval of the lease agreement and shall include in the application both of the following:

(1) The information and materials described in subdivisions (a) to (e), inclusive, of Section 1025.

(2) Other information which the state board determines is necessary to review the application.

(b) The state board, after providing notice and opportunity for a hearing, may approve the lease if, in the judgment of the state board, the lease would not operate to injure the legal users of water or unreasonably affect fish, wildlife, or other instream beneficial uses.

(Added by Stats.1991, Ch. 847.)

1025.7. Water leases pursuant to this chapter are not subject to Chapter 10 (commencing with Section 1700) or Chapter 10.5 (commencing with Section 1725) of Part 2.

(Added by Stats.1991, Ch. 847.)

1026. The lead agency shall not approve a water lease until 30 days after the state board provides written public notice, including notice by personal delivery or registered mail to legal users of water which may be affected by the lease, as identified by the state board, the Department of Fish and Game, and any party requesting special notice of water leases pursuant to this chapter. The water lessor shall pay a reasonable fee, in an amount determined by the state board, for the cost of providing the notice.

(Added by Stats.1991, Ch. 847.)

1027. (a) Any water lease agreement entered into pursuant to this chapter involving the transfer of water from the Sacramento-San Joaquin Delta shall provide outflow consistent with the carriage water requirements determined by the department to be necessary for the transfer of the water subject to the lease to maintain the water quality which would exist in the delta without the transfer undertaken in connection with the water lease.

(b) Any water lease agreement providing for the lease of water from a lessor north of the Sacramento-San Joaquin Delta to a lessee south of the Sacramento-San Joaquin Delta shall provide for an amount of water for delta salt water repulsion and environmental purposes as administratively prescribed by the state board in proportion to all similar requirements for delta exports.

(Added by Stats.1991, Ch. 847.)

1028. In any proceeding pursuant to Section 1029, the court shall determine issues relating to the lease and the effects of the water transfer pursuant to the

lease on the legal users of water and on fish and wildlife, but any request or petition to permanently change the water right which may be subject to the lease shall be heard in a separate proceeding.

(Added by Stats.1991, Ch. 874.)

1029. Division 13 (commencing with Section 21000) of the Public Resources Code applies to water lease agreements authorized by this chapter. For purposes of that division, the lessor is the lead agency, except that if the lessor is a private party and the lessee is a water district, the lessee is the lead agency. If both the lessor and the lessee are private parties, the state board is the lead agency.

(Added by Stats.1991, Ch. 847.)

1030. During the term of the water lease, the state board shall monitor the lease, as appropriate. The state board shall initiate proceedings, if appropriate, to enforce the terms and conditions of water leases, and permits and licenses or water use authority to ensure that the water lease does not operate to injure any legal user of the water or unreasonably affect fish, wildlife, or other instream beneficial uses.

(Added by Stats.1991, Ch. 847.)

CHAPTER 2. ADMINISTRATIVE PROVISIONS GENERALLY

1050. This division is hereby declared to be in furtherance of the policy contained in Section 2 of Article X of the California Constitution and in all respects for the welfare and benefit of the people of the state, for the improvement of their prosperity and their living conditions, and the board and the department shall be regarded as performing a governmental function in carrying out the provisions of this division.

1051. The board for the purpose of this division may:

(a) Investigate all streams, stream systems, portions of stream systems, lakes, or other bodies of water.

(b) Take testimony in regard to the rights to water or the use of water thereon or therein.

(c) Ascertain whether or not water heretofore filed upon or attempted to be appropriated is appropriated under the laws of this State.

1051.5. In furtherance of its powers and duties under Parts 2 (commencing with Section 1200) and 3 (commencing with Section 2000) of this division, the board may supervise trial distribution of water in accordance with agreements and court orders therefor.

1052. (a) The diversion or use of water subject to this division other than as authorized in this division is a trespass.

(b) Civil liability may be administratively imposed by the board pursuant to Section 1055 for a trespass as defined in this section in an amount not



to exceed five hundred dollars (\$500) for each day in which the trespass occurs.

(c) The Attorney General, upon request of the board, shall institute in the superior court in and for any county wherein the diversion or use is threatened, is occurring, or has occurred appropriate action for the issuance of injunctive relief as may be warranted by way of temporary restraining order, preliminary injunction, or permanent injunction.

(d) Any person or entity committing a trespass as defined in this section may be liable for a sum not to exceed five hundred dollars (\$500) for each day in which the trespass occurs. The Attorney General, upon request of the board, shall petition the superior court to impose, assess, and recover any sums pursuant to this subdivision. In determining the appropriate amount, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(e) All funds recovered pursuant to this section shall be transferred to the General Fund of the state.

(f) The remedies prescribed in this section are cumulative and not alternative. (Amended by Stats.1991, Ch. 1098.)

1053. A full and accurate record of business or acts performed or of testimony taken by the board and the department in pursuance of the provisions of this division shall be kept and be placed on file in the office of the board or the department, as the case may be.

1054. The board and the department may certify to all of their official acts and may certify copies of all official documents and orders filed in their respective offices. For the purpose of making such certifications, the board and the department may adopt seals.

1055. (a) The executive director of the board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to Section 1052 or Section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail, and shall inform the party so served that the party may request a hearing within 20 days after the party has been served. The hearing shall be before a member of the board as it may specify.

(c) After any hearing, the member shall report a proposed decision and order to the board and shall supply a copy to the party served with the complaint, the board's executive director, and any other person requesting a copy. The member of the board acting as hearing officer may sit as a member of the board in deciding the matter. The board, after making an independent review of the record and taking any additional evidence as may be necessary and could not reasonably have been offered before the hearing officer, may adopt, with or without revision, the proposed decision and order.

(d) Orders setting administrative civil liability shall become effective and final upon issuance thereof and payment shall be made.

(Amended by Stats.1991, Ch. 1098; Amended by Stats.1996, Ch. 667.)

1055.1. (Repealed by Stats. 1996, Ch.659)

1055.2. No person shall be subject to both civil liability imposed under Section 1055 and civil liability imposed by the superior court under subdivision (d) of Section 1052 for the same act or failure to act.

1055.3. In determining the amount of civil liability, the board shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(Added by Stats.1987, Ch. 756; Former Section 1055 was repealed by Stats.1976, Ch. 596.)

1055.4. After the time for review under Chapter 4 (commencing with Section 1120) has expired, the board may apply to the clerk of the appropriate court for a judgment to collect the administrative civil liability imposed in accordance with Section 1055. The application, which shall include a certified copy of the board action, constitutes a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

(Added by Stats.1997, Ch. 323.)

1056. The board and the department may fix reasonable charges for publications issued under their respective authorities.

1057. All fees charged and collected under this chapter shall be paid, at least once each month, accompanied by a detailed statement thereof, into the State Treasury.

1058. The board may make such reasonable rules and regulations as it may from time to time deem advisable in carrying out its powers and duties under this code.

1058.5. (a) This section applies to any emergency regulation adopted by the board for which the board makes both of the following findings:

(1) The emergency regulation is adopted to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote wastewater reclamation, or to promote water conservation.

(2) The emergency regulation is adopted in response to conditions which exist, or are threatened, in a critically dry year immediately preceded by two or more consecutive dry or critically dry years.



(b) Notwithstanding Sections 11346.1 and 11349.6 of the Government Code, any findings of emergency adopted by the board, in connection with the adoption of an emergency regulation to which this section applies, are not subject to review by the Office of Administrative Law.

(c) Any emergency regulation adopted by the board to which this section applies may remain in effect for up to 270 days, as determined by the board, and is deemed repealed immediately upon a finding by the board that due to changed conditions it is no longer necessary for the regulation to remain in effect.

(Added by Stats.1991-92, Ch. 12.)

1059. The board and the department, as to matters under each of their respective jurisdictions, may designate one or more of their employees who shall have authority to certify under their respective seals all copies of orders, applications, permits, licenses, certificates, and other records under this division, and to attest all records, transcripts, evidence, and other original documents which it is necessary so to authenticate.

1060. (a) All fees collected by the State Water Resources Control Board or by a California regional water quality control board, and deposited in the State Treasury, except funds collected under Part 3 (commencing with Section 2000) of this division, funds received for trial distribution expenses in connection with the administration of Section 1051.5, and deposits and payments made pursuant to Section 5007, shall be credited to the appropriation for the support of the board which is current at the time of the deposit of such fees in the State Treasury.

(b) Money deposited with or paid to the board pursuant to Section 1051.5 or 5007 and deposited by the board in the State Treasury is available for expenditure by the board in accordance with those sections without regard to fiscal years and irrespective of the provisions of Section 16304 of the Government Code, and any unused balance shall be refunded by the board to the person entitled thereto.

1061. The board shall prepare and submit to the Governor and the Legislature by July 1, 1988, a report evaluating the board's ability to monitor and enforce compliance with bypass flow and other requirements included as conditions in permits and licenses. The report will include a discussion of all of the following:

- (a) The number of permits and licenses with bypass flow conditions.
- (b) The current enforcement effort and strategy, and its deficiencies.
- (c) Recommendations for establishment of an efficient and reliable program to systematically enforce compliance with minimum flow and other requirements and act as a greater deterrent to violation.

(d) The cost of, and potential funding sources for, implementing the recommendations.

(Added by Stats.1987, Ch. 527.)

1062. (a) The Legislature hereby finds and declares as follows:

- (1) The watershed of the San Francisco Bay/Sacramento-San Joaquin

Delta Estuary supplies a large percentage of water used in California.

(2) The State Water Resources Control Board and the California regional water quality control boards are responsible for protecting all beneficial uses of those waters. Beneficial uses include those defined in subdivision (f) of Section 13050.

(3) The board is engaged in a hearing process to consider revisions to the water quality standards contained in the existing water quality control plan for the Sacramento-San Joaquin Delta and Suisun Marsh and to consider new standards for San Francisco Bay.

(4) There is a broad diversity of viewpoints regarding appropriate water quality standards and priorities with respect to the various beneficial uses.

(5) Any new or revised standards and plans that derive from the hearing process will have a substantial impact on the people of California, and there is significant public interest in these deliberations.

(b) It is the intent of the Legislature that the hearing process shall provide for the involvement of all those who wish to participate in these deliberations. It is further the intent of the Legislature that members of the general public shall have full access to the proceedings and to all official records of the hearings.

(c) The board shall lodge one copy of the transcripts of the hearings referred to in subdivision (a) for inspection and use by the general public at the following locations: the headquarters of the State Water Resources Control Board in Sacramento; the headquarters of the regional water quality control boards in Los Angeles, Fresno, and San Diego; and the headquarters of the Environmental Protection Agency in San Francisco. The transcripts shall be updated on a timely basis throughout the course of the board's bay-delta hearing process. At the conclusion of the hearing process, one transcript shall be maintained at the headquarters of the board in Sacramento.

(d) The board shall provide for staff services at the headquarters of the board in Sacramento and at the headquarters at each of the regional water quality control boards listed in subdivision (c) to assist the public in utilizing the transcripts and other documents and to facilitate participation by interested parties in the hearing process.

(e) During the course of the board's bay-delta hearing process, the board shall provide for public access to an electronic data retrieval system capable of displaying the text of the hearing transcript at the following locations: the headquarters of the board in Sacramento; the headquarters of the regional water quality control boards in Oakland, Los Angeles, Fresno, Redding, Riverside, and San Diego; and the headquarters of the Environmental Protection Agency in San Francisco.

(Added by Stats.1988, Ch. 971.)

CHAPTER 3. WITNESSES AND PRODUCTION OF EVIDENCE

Article 1. Definitions

1075. As used in this chapter, "proceeding" means any inquiry, investigation, hearing, ascertainment, or other proceeding ordered or undertaken by the board pursuant to this code.



1076. As used in this chapter, "evidence" means any paper, book, map, account, or document.

Article 2. Attendance and Fees

1080. The board may administer oaths and issue subpoenas for the attendance and giving of testimony by witnesses and for the production of evidence in any proceeding in any part of the State.

1081. Each witness who appears by order of the board shall receive for his attendance the same fees and mileage allowed by law to witnesses in civil cases, which shall be paid by the party at whose request the witness is subpoenaed.

1082. When any witness who has not been required to attend at the request of any party is subpoenaed by the board his fees and mileage shall be paid from the funds appropriated for the use of the board and available for the purpose.

1083. Any witness subpoenaed, except one whose fees and mileage are payable from the funds of the board, may, at the time of service, demand the fees to which he is entitled for travel to and from the place at which he is required to appear and one day's attendance.

1084. If the witness demands the fees to which he is entitled at the time of service and they are not at that time paid or tendered he shall not be required to attend as directed in the subpoena.

1085. All fees and mileage to which any witness is entitled under the provisions of this chapter may be collected by action therefor instituted by the person to whom they are payable.

1086. No witness shall be compelled to attend as a witness before the board under this division out of the county in which he resides, unless the distance is less than 150 miles from his place of residence to the place of hearing, except that the board, upon affidavit of any party showing that the testimony of such witness is material and necessary, may indorse on the subpoena an order requiring the attendance of such witness.

Article 3. Compelling Attendance

1090. The superior court of the county in which any proceeding is held by the board may compel the attendance and giving of testimony by witnesses and the production of evidence as required by any subpoena issued by the board.

1091. In case of the refusal of any witness to attend or testify or produce any evidence required by a subpoena issued by it, the board may report by petition to the superior court in and for the county in which the proceeding is pending.

1092. The petition shall set forth the following:

(a) That due notice has been given of the time and place of attendance of the witness or for the production of evidence and that the witness has been summoned in the manner prescribed in this chapter.

(b) That the witness has failed and refused to attend or produce the evidence required by the subpoena before the board in the proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of the proceeding.

1093. The petition shall ask an order of court compelling the witness to attend, testify, and produce the evidence before the board.

1094. The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place fixed by the court in the order and not more than 10 days from the date of the order, and then and there show cause, if any he have, why he refused to obey the subpoena, or refused to answer questions propounded to him by the board, or neglected, failed, or refused to produce before the board the evidence called for in the subpoena.

1095. A copy of the order and of the petition shall be served upon the witness.

1096. If it appears to the court that the subpoena was regularly issued, the court shall thereupon enter an order that the witness appear before the board at the time and place fixed in the order and testify or produce the required evidence or both testify and produce.

1097. Upon failure to obey the order the witness shall be dealt with as for contempt of court.

Article 4. Depositions

1100. The board or any party to a proceeding before it may, in any investigation or hearing, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this State.

Article 5. Immunity

1105. (a) Except as provided in subdivision (c), no person shall be excused from testifying or from producing any evidence in any investigation or inquiry by or hearing before the board upon the ground that the testimony or evidence required of him or her may tend to incriminate him or her subject him or her to any penalty.

(b) The board may grant immunity to any person who is compelled to testify or to produce documentary evidence before the board and who invokes the privilege against self-incrimination.



(c) If the board does not grant immunity after a person invokes the privilege against self-incrimination, the board shall excuse the person from giving any testimony or producing any evidence to which the privilege against self-incrimination applies, and the board shall dismiss, continue, or limit the scope of the proceedings as necessary to ensure that the unavailability of the testimony or evidence does not deny due process law to any party.

(Amended by Stats.1994, Ch. 45.)

1106. No person who is granted immunity under subdivision (b) of Section 1105, shall be criminally prosecuted or be subjected to any criminal penalty for or on account of any act, transaction, matter, or thing material to the matter under investigation by the board concerning which he or she has been compelled as a witness to testify or to produce documentary evidence pursuant to the granting of immunity; but no person so testifying or producing shall be exempt from prosecution and punishment for any perjury committed by him or her in that testimony.

(Amended by Stats.1994, Ch. 45.)

CHAPTER 4. RECONSIDERATION, AMENDMENT AND JUDICIAL REVIEW OF WATER RIGHT DECISIONS AND ORDERS

Article 1. General Provisions

1120. This chapter applies to any decision or order issued under this part or Section 275, Part 2 (commencing with Section 1200), Part 2 (commencing with Section 10500) of Division 6, Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, or the public trust doctrine.

(Added by Stats.1996, Ch. 659.)

1121. The board shall serve a copy of a decision or order on the parties by personal delivery or registered mail.

(Added by Stats.1996, Ch. 659.)

Article 2. Reconsideration and Amendment of Decisions and Orders

1122. The board may order a reconsideration of all or part of a decision or order on the board's own motion or on the filing of a petition of any interested person. The petition shall be filed not later than 30 days from the date on which the board adopts a decision or order. The authority of the board to order a reconsideration on its own motion shall expire 30 days after it has adopted a decision or order. The board shall order or deny reconsideration on a petition therefor not later than 90 days from the date on which the board adopts the decision or order.

(Added by Stats.1996, Ch. 659.)

1123. The decision or order may be reconsidered by the board on all the pertinent parts of the record and such argument as may be permitted, or a further hearing may be held, upon notice to all interested persons, for the purpose of receiving such additional evidence as the board may, for cause, allow. The decision or order on reconsideration shall have the same force and effect as an original order or decision.

(Added by Stats.1996, Ch. 659.)

1124. The board at any time may amend or modify a decision or order to correct any obvious typographical or clerical error or oversight without the necessity of notice and a hearing thereon.

(Added by Stats.1996, Ch. 659.)

Article 3. Review by Court of Decisions and Orders

1126. (a) It is the intent of the Legislature that all issues relating to state water law decided by the board be reviewed in state courts, if a party seeks judicial review. It is further the intent of the Legislature that the courts assert jurisdiction and exercise discretion to fashion appropriate remedies pursuant to Section 389 of the Code of Civil Procedure to facilitate the resolution of state water rights issues in state courts.

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

(c) Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern the judicial proceedings.

For the purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall exercise its independent judgment on the evidence in any case involving the judicial review of a cease and desist order issued pursuant to Article 2 (commencing with Section 1831) of Chapter 12 of Part 2 of Division 2, and in any other case in which the court is authorized by law to exercise its independent judgment on the evidence.

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

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

(Added by Stats.1996, Ch. 659; Amended by 1998, Ch. 345)



1126.2. The provisions of Assembly Bill 3036 of the 1995-96 Regular Session, which, among other things, added this chapter, do not apply to any proceeding for the judicial review of a decision or order of the board that is pending on December 31, 1996, and the applicable law in effect on that date shall continue to apply to that proceeding.

(Added by Stats. 1996, Ch. 659.)

PART 2:
APPROPRIATION OF WATER

CHAPTER 1. GENERAL PROVISIONS

Article 1. Water Subject to Appropriation

1200. Whenever the terms stream, lake or other body of water, or water occurs in relation to applications to appropriate water or permits or licenses issued pursuant to such applications, such term refers only to surface water, and to subterranean streams flowing through known and definite channels.

1201. All water flowing in any natural channel, excepting so far as it has been or is being applied to useful and beneficial purposes upon, or in so far as it is or may be reasonably needed for useful and beneficial purposes upon lands riparian thereto, or otherwise appropriated, is hereby declared to be public water of the State and subject to appropriation in accordance with the provisions of this code.

1202. The following are hereby declared to constitute unappropriated water:

(a) All water which has never been appropriated.

(b) All water appropriated prior to December 19, 1914, which has not been in process, from the date of the initial act of appropriation, of being put, with due diligence in proportion to the magnitude of the work necessary properly to utilize it for the purpose of the appropriation, or which has not been put, or which has ceased to be put to some useful or beneficial purpose.

(c) All water appropriated pursuant to the Water Commission Act or this code which has ceased to be put to the useful or beneficial purpose for which it was appropriated, or which has been or may be or may have been appropriated and is not or has not been in the process of being put, from the date of the initial act of appropriation, to the useful or beneficial purpose for which it was appropriated, with due diligence in proportion to the magnitude of the work necessary properly to utilize it for the purpose of the appropriation.

(d) Water which having been appropriated or used flows back into a stream, lake or other body of water.

1203. Any water the right to the use of which is held by any municipality which is in excess of the existing municipal needs therefor may be appropriated by any person entitled to the possession of land upon which such excess water may be put



to beneficial use but the right of such person to use such water shall continue only for such period as the water is not needed by the municipality. This section supplements but does not otherwise affect Sections 1460 to 1464, inclusive.

(See note to Section 106.5.)

Article 1.3. Declaration of Fully Appropriated Stream System

1205. (a) Following notice and hearing, the board may adopt a declaration that a stream system is fully appropriated. As used in this article, "stream system" includes stream, lake, or other body of water, and tributaries and contributory sources, but does not include an underground water supply other than a subterranean stream following through known and definite channels.

(b) A declaration that a stream system is fully appropriated shall contain a finding that the supply of water in the stream system is being fully applied to beneficial uses where the board finds that previous water rights decisions have determined that no water remains available for appropriation.

(c) Upon its own motion or upon petition of any interested person, and following notice and hearing, the board may revoke or revise a declaration that a stream system is fully appropriated.

1206. (a) From and after the date of adoption of a declaration that a stream system is fully appropriated, and subject to subdivision (b), the board shall not accept for filing any application for a permit to appropriate water from the stream system described in that declaration, and the board may cancel any application pending on that date.

(b) Notwithstanding subdivision (a), the board may provide, in any declaration that a stream system is fully appropriated, for acceptance for filing of applications to appropriate water under specified conditions. Any provision to that effect shall specify the conditions and may contain application limitations, including, but not limited to, limitations on the purpose of use, on the instantaneous rate of diversion, on the season of diversion, and on the amount of water which may be diverted annually. The board may make those limitations applicable to individual applications to appropriate water, or to the aggregate of the applications, or to both.

(c) Subdivision (a) shall not apply to applications for temporary permits made pursuant to Chapter 6.5 (commencing with Section 1425) or to any provision of this code respecting change in point of diversion, place of use, or purpose of use.

1207. Notice of hearing pursuant to this article shall be given as follows:

(a) The notice shall be published at least once a week for four consecutive weeks in one or more newspapers of general circulation published in each county in which any part of the stream system is situated, and publication shall be complete at least 60 days prior to the date of hearing.

(b) At least 60 days prior to the date of the hearing, the notice shall be mailed to all persons known to the board who own land that appears to be riparian to the stream system, who divert water from the stream system, or who have made written request to the board for special notice of hearing pursuant to this article.

(Added by Stats.1987, Ch. 788.)



Article 1.5. Treated Waste Water

1210. The owner of a waste water treatment plant operated for the purpose of treating wastes from a sanitary sewer system shall hold the exclusive right to the treated waste water as against anyone who has supplied the water discharged into the waste water collection and treatment system, including a person using water under a water service contract, unless otherwise provided by agreement.

Nothing in this article shall affect the treatment plant owner's obligations to any legal user of the discharged treated waste water.

Nothing in this article is intended to interfere with the regulatory authority of the board or any California regional water quality control board under Division 7 (commencing with Section 13000).

1211. Prior to making any change in the point of discharge, place of use, or purpose of use of treated waste water, the owner of any waste water treatment plant shall obtain approval of the board for any such change. The board shall review such changes pursuant to the provisions of Chapter 10 (commencing with Section 1700) of Part 2 of Division 2.

1212. The board shall not grant any permit or license to any person other than the treated waste water producer for the appropriation of treated waste water where the producer has introduced such water into the watercourse with the prior stated intention of maintaining or enhancing fishery, wildlife, recreational, or other instream beneficial uses. Holders of existing water rights may not use or claim such water.

Article 1.7. Areas of Origin

1215. This article shall only apply to a water supplier exporting or intending to export water for use outside a protected area pursuant to applications to appropriate surface water filed, or groundwater appropriations initiated, after January 1, 1985, that are not subject to Section 11460.

1215.5. (a) For the purposes of this article, "protected area", means all of lands which normally drain to the ocean, to a hydraulic sink, or to another state within any of the following, and only the following, river systems:

- (1) The Sacramento River System.
- (2) The Mokelumne River System.
- (3) The Calaveras River System.
- (4) The San Joaquin River System.
- (5) The Mono Lake System.
- (6) The combined Truckee, Walker, and Carson River Systems.
- (7) The combined river systems which drain to the ocean from and

including the Russian River System northward to the California-Oregon border.

(b) The confluences of the Sacramento, Mokelumne, Calaveras, and San Joaquin River Systems are within the delta, as defined in Section 12220, and the delta shall be considered to be within each of these protected areas.



1215.6. For the purposes of this article, "water user or users" within a protected area means an appropriator or appropriators, a riparian user or users, or a groundwater user or users of water on land owned or controlled by them within a protected area.

1216. A protected area shall not be deprived directly or indirectly of the prior right to all the water reasonably required to adequately supply the beneficial needs of the protected area, or any of the inhabitants or property owners therein, by a water supplier exporting or intending to export water for use outside a protected area pursuant to applications to appropriate surface water filed, or groundwater appropriations initiated, after January 1, 1985, that are not subject to Section 11460.

1217. (a) In addition to the right to obtain a water right which would have priority over the rights of an exporter, water users in a protected area shall have the right to purchase, for adequate compensation, water made available by the construction of any works by a water supplier exporting or intending to export water for use outside the protected area. Nothing in this section shall be construed to authorize export of water from a protected area to which users within the protected area are otherwise entitled, nor to require users within a protected area to pay for water to which they are otherwise entitled.

(b) At the request of a water user or users within a protected area, a water supplier exporting or intending to export water for use outside the protected area who is subject to Section 1216 shall meet and negotiate in good faith for the purpose of entering into contracts for the purchase of water as provided in subdivision (a).

(c) Any water user or users in a protected area may bring an action in the superior court to require compliance with the duty to meet and negotiate in good faith pursuant to this section. The court may issue a temporary restraining order, preliminary injunction, or permanent injunction, as appropriate, to secure compliance with this section.

(d) The meetings and negotiations required by this section may occur between the water supplier exporting water for use outside a protected area and any water user or users in a protected area, as determined appropriate by the parties. The meetings and negotiations shall not be subject to the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code or Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code.

(e) Nothing in this section shall be construed as a limitation on the authority of the board to establish water quality standards or to subject water right entitlements to terms and conditions for the protection of reasonable and beneficial uses consistent with the provisions of Section 2 of Article X of the California Constitution.

1218. Upon the request of an applicant for a permit to appropriate water for use outside a protected area, a county of origin shall cooperate with the applicant in



estimating the amount of water that may be purchased within the county pursuant to subdivision (a) of Section 1217 and that may be developed or used within the county impacting the proposed project, including an estimated time schedule.

The purpose of this section is to assist the applicant in planning the export project and to assist the counties of origin in their water planning.

1219. A water supplier exporting or intending to export water outside a protected area, or a water user or users within a protected area, may declare that an impasse has been reached between the parties in negotiations over matters within the scope of negotiations specified in Section 1217 and may request the director to appoint a panel of five disinterested persons from whom the parties shall select, by a process of elimination, the mediator. After drawing lots to determine the order, the parties shall each, in turn, eliminate a name from the panel until there is only one person remaining on the panel, who shall be the mediator. The mediator shall meet forthwith with the parties or their representatives, either jointly or separately, and shall take such other steps as the mediator may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be provided by the parties. Nothing in this section shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure, and in the event of such agreement, the director shall not appoint a mediator.

1219.5. The provisions of this article shall not require any water supplier exporting or intending to export water for use outside a protected area to furnish to any water user or users in a protected area claiming rights under this article, without adequate compensation therefor, any water made available for domestic, municipal, industrial, or agricultural uses by the construction of any works by the water exporter.

1220. (a) No groundwater shall be pumped for export from within the combined Sacramento and Delta-Central Sierra Basins, as defined in Department of Water Resources' Bulletin 160-74, unless the pumping is in compliance with a groundwater management plan that is adopted by ordinance pursuant to subdivision (b) by the county board of supervisors, in full consultation with affected water districts, and that is subsequently approved by a vote in the counties or portions of counties that overlie the groundwater basin, except that water that has seeped into the underground from any reservoir, afterbay, or other facility of an export project may be returned to the water supply of the export project. For the purposes of this section, the county board of supervisors may designate a county water agency to act on its behalf if the directors of the county water agency are publicly elected and the county water agency encompasses the entire county. The county board of supervisors may revoke that designation by resolution at any time.

(b) Notwithstanding any other provision of law, a county board of supervisors whose county contains part of the combined Sacramento and Delta-Central Sierra Basins may adopt groundwater management plans to implement the purposes of this section.

(c) A county board of supervisors shall not exercise the powers authorized by this section within the boundaries of another local agency supplying water to that area without the prior agreement of the governing body of that other local agency.

1221. This article shall not be construed to authorize the board to regulate groundwater in any manner.

1222. Nothing in this article shall be deemed to diminish the rights and protections to watersheds of origin contained in existing law including, but not limited to, Part 4.5 (commencing with Section 12200) of Division 6.

Article 2. Exclusive Method of Appropriation

1225. Except as provided in Article 2.5 (commencing with Section 1226) of this chapter, no right to appropriate or use water subject to appropriation shall be initiated or acquired except upon compliance with the provisions of this division.

Article 2.5. Stockponds

1226. The Legislature finds and declares that it is necessary and beneficial to the state to clear up many heretofore uncertain conditions of water rights which are the result of a large number of dams and other water impoundment structures which have been constructed for livestock watering use, including domestic and recreational use which is incidental to livestock use; that these structures have been constructed, many at the urging of local, state and federal government, as a matter of practical necessity by the owners or users of the land on which they exist; that these structures have been built without clearly defined water rights as a result of the uncertainty of the state law and the lack of information by the owners as to proper procedures by which to obtain a water right; and that it is in the interest of the state to clarify the right to the water impounded by these structures.

(Added by Stats. 1974, Ch. 140.)

1226.1. The owner of any dam or other water impoundment structure constructed prior to January 1, 1969, the capacity of which is not in excess of 10 acre-feet on January 1, 1975, and concerning which water rights litigation between private parties was not a matter of record prior to January 1, 1974, is declared to have a valid water right for the use of the water for purposes as specified in Section 1226, if that person files a claim of water right with the board not later than December 31, 1997. All permits or licenses issued by the board prior to the effective date of this article shall have priority over any water right claimed pursuant to this article.

(Amended by Stats. 1996, Ch. 667.)

1226.2. (a) Any person who has a valid water right pursuant to Section 1226.1, who files a claim of water right with the board on or before December 31, 1977, has a water right priority as of the date of the construction of the dam or other water impoundment structure.



(b) Any person who has a valid water right pursuant to Section 1226.1, who files a claim of water right with the board after December 31, 1977, and before January 1, 1998, has a water right priority as of the date of filing.
(Amended by Stats.1996, Ch. 667.)

1226.3. Each claim of water right shall be accompanied by a fee which shall be in an amount determined by the board to cover the reasonable administrative costs of processing the claim. If the claimant establishes a water right pursuant to this article, the board shall issue a certificate of the validity of the water right to the claimant as expeditiously as practicable.
(Amended by Stats.1996, Ch. 667.)

1226.4. The board may, after notice and hearing, revoke any certificate of a water right granted pursuant to this article upon a finding that the water has ceased to be used for the purposes specified in Section 1226.
(Amended by Stats.1996, Ch. 667.)

Article 2.6. Nonreserved Water Rights for Federal Uses

1227. The Legislature finds and declares that it is in the public interest to provide a priority of right to appropriate water for various beneficial water uses which were initiated by the United States, or its agencies, on reserved lands prior to July 3, 1978, and which uses are for secondary purposes, other than those for which the federal reservation was created, provided that the priority of right does not impair any existing water right.

1227.1. (a) To obtain the priority of right set forth in Section 1227, any agency of the United States shall submit to the board, on or before July 1, 1984, a statement for each water use initiated under claim of right by the United States on reserved lands for which beneficial use of water was initiated on or before July 3, 1978, concerning which water rights litigation was not a matter of record prior to July 3, 1978, and which use is for secondary purposes other than those for which the federal reservation was created.

(b) Each statement shall include, but not be limited to, all of the following:

- (1) The name and address of the agency of the United States which maintains the federal water project.
- (2) The name and address of the person who is responsible for the day-to-day operations of the federal water project.
- (3) The name of the stream or other source from which the water is being appropriated and the name of the next major stream or other body of water to which the source is tributary.
- (4) The point of diversion and place of use.
- (5) The purpose of the use.
- (6) A general description of the area in which the water is used.
- (7) The year in which the diversion was commenced or as near as is known.
- (8) Any information tending to indicate the quantity of water used, as may be prescribed by the board.

(c) The board shall make available to any person upon request copies of statements filed pursuant to this section for federal water uses within a particular county. Any person may file a request for special notice, by county.

1227.2. (a) Subject to subdivisions (b) and (c), any use for which a statement is submitted to the board pursuant to Section 1227.1 has a priority for the appropriation of water as of the date of initial use of the water, except that all permits and licenses issued by the board on applications, including those filed by the department pursuant to Part 2 (commencing with Section 10500) of Division 6, filed prior to July 1, 1984, have priority over any water right claimed by the United States pursuant to this article. Any use for which a statement is required shall be subject to Article 3 (commencing with Section 11460) of Chapter 3 of Part 3 of Division 6, in a like manner as the Central Valley Project.

(b) The scope of any appropriative right recognized pursuant to this article, including terms and conditions judged necessary by the board to best develop, conserve, and utilize the appropriated water in the public interest, shall be determined when that scope is at issue in any of the following proceedings:

(1) A proceeding upon an application, permit, or license of another, pursuant to this part, where the United States is a protestant or interested party.

(2) A proceeding to determine all rights to water of a stream system pursuant to Chapter 3 (commencing with Section 2500) of Part 3.

(3) A general adjudication of water rights commenced in the courts of this state.

(4) A proceeding to determine whether the board should commence an action pursuant to Section 1052, whether the United States is a complainant or a respondent.

(5) A proceeding under Section 275 and rules of the board in implementation thereof, whether the United States is a complainant or a respondent.

(c) The board shall, following any determination pursuant to subdivision (b), issue evidence of the scope of the right so determined; provided, that in no event, either prior or subsequent to the determination, shall the right exceed the amount of water that may be reasonably used without waste and under reasonable methods of use and diversion.

1227.3. This article does not apply to uses involving the appropriation of water by any person, including any agency of the United States, pursuant to the Federal Reclamation Law, as amended or supplemented, or any other federal statute which authorizes projects for the development of water for uses other than uses upon reserved federal lands.

1227.4. The board may, after following procedures set forth in Sections 1675 to 1675.2, inclusive, revoke any water right determined pursuant to this article upon a finding that the water has ceased to be used for a purpose for which the original development was intended.

Article 2.7. Registration of Small Use Domestic Appropriations

1228. This article shall be known and may be cited as the Water Rights Permitting Reform Act of 1988.

1228.1. (a) The Legislature finds and declares that it is in the public interest to provide a timely, efficient, and economic procedure for the acquisition of rights to appropriate water for a small domestic use, including incidental stockwatering and irrigation uses, subject to prior rights.

(b) As used in this article, "small domestic use" means a domestic use, not to exceed direct diversion of 4500 gallons per day or diversion by storage of 10 acre-feet per annum, as that use is defined by board rule, and shall include impoundment for incidental aesthetic, recreational, or fish and wildlife purposes.

1228.2. (a) Subject to subdivision (b), any person may obtain a right to appropriate water for a small domestic use upon first registering the use with the board and thereafter applying the water to reasonable and beneficial use with due diligence, except that not more than one registration shall be in effect at any time for any facility.

(b) Initiation of rights to appropriate water pursuant to this article shall be subject to Article 1.3 (commencing with Section 1205), relating to fully appropriated stream systems. The board shall not accept any registration of water use which proposes as a source of water supply any stream system which has been unconditionally declared by the board to be fully appropriated pursuant to Section 1205, except that subdivision (b) of Section 1206, relating to conditional declarations of fully appropriated stream systems, shall apply to registration of water use pursuant to this article, and the board shall accept those registrations where consistent with the conditions specified in any such declaration.

(c) On or before June 30, 1989, and annually thereafter, the Division of Water Rights shall prepare and submit to the board a report summarizing the location, nature, and amount of water appropriated pursuant to this article. The report shall include a description of the availability of unappropriated water in those stream systems which may become fully appropriated within the next reporting period.

(d) Whenever it can be reasonably anticipated that a stream system may become fully appropriated within the next reporting period, the board shall, following notice and hearing, determine whether that stream system should be declared fully appropriated pursuant to Article 1.3 (commencing with Section 1205).

1228.3. (a) Registration of water use pursuant to this article shall be made upon a form prescribed by the board. The registration form shall set forth all of the following:

- (1) The name and post office address of the registrant.
- (2) The source of water supply.
- (3) The nature and amount of the proposed use.
- (4) The proposed place of diversion.

(5) The place where it is intended to use the water.

(6) The time for completion of construction of diversion works and for complete application of the water to the proposed use.

(7) A certification that the registrant has contacted a representative of the Department of Fish and Game designated by that department for that purpose, has provided information to that department which is set forth in the registration form, and has agreed to comply with all lawful conditions, including, but not limited to, conditions upon the construction and operation of diversion works, required by the Department of Fish and Game.

(8) Any other information that may reasonably be required by the board.

(b) Registration of water use shall be deemed completed on the date that the form, executed in substantial compliance with the requirements of this section, and the registration fee specified in subdivision (a) of Section 1228.8 are received by the board.

(c) The board shall issue monthly a list of registrations filed under this article during the preceding calendar month. This list shall contain the information required by paragraphs (1) to (6), inclusive, of subdivision (a). The board shall mail the monthly list of registrations filed to any person who so requests.

1228.4. (a) Any completed registration of water use gives to the registrant a priority of right as of the date of completed registration to take and use the amount of water ultimately applied with due diligence to reasonable and beneficial use thereunder, which amount shall not exceed the amount of proposed use as shown on the registration form.

(b) Any right obtained pursuant to this article shall remain in effect unless and until any of the following occur:

(1) The right is forfeited for nonuse pursuant to Section 1241, or abandoned.

(2) The right is revoked because the registrant knowingly made any false statement, or knowingly concealed any material fact, in the registration.

(3) The right is revoked for failure to renew the registration as provided in this article.

(4) The right is revoked pursuant to subdivision (c) of Section 1228.6.

1228.5. (a) Registration of a small domestic use pursuant to this article shall be renewed prior to the expiration of each five-year period following completed registration.

(b) Renewal of registration shall be made upon a form prescribed by the board and shall contain such report of water use made pursuant to the registration as may be required by the board.

(c) The conditions established by the board pursuant to Section 1228.6 which are in effect at the time of renewal of registration shall supersede the conditions which were applicable to the original completed registration.

(d) Failure to renew registration in substantial compliance with the reporting requirements prescribed by the board within the time period specified in subdivision (a), or to pay the renewal fee specified in subdivision (b) of Section 1228.8, shall result by operation of law in the revocation of any right acquired pursuant to this article.



1228.6. (a) The board shall establish, and may from time to time revise, reasonable general conditions to which all appropriations made pursuant to this article shall be subject. The conditions shall include, but shall not be limited to, the following:

- (1) The appropriation is subject to prior rights.
- (2) All conditions lawfully required by the Department of Fish and Game are conditions upon the appropriations.
- (3) Diversion works shall be constructed and water applied to beneficial use with due diligence.
- (4) Registration shall be renewed and water use reported pursuant to law and to the rules of the board.

(b) Immediately upon registration pursuant to Section 1228.3, renewal of registration pursuant to Section 1228.5, or amended registration pursuant to Section 1228.7, the board shall provide the registrant with a written document setting forth the conditions required by this section, and the perfection and exercise of rights acquired pursuant to this article shall at all times be subject to those conditions.

(c) The conditions required by this section shall be deemed "terms and conditions" within the meaning of Section 1825 and the expression of legislative intent contained in that section shall be applicable thereto. The authority of the board to enforce the terms and conditions of permits and licenses to appropriate water, and to prevent the unlawful diversion of water, including, but not limited to, provisions regarding cease and desist orders and the revocation of permits and licenses, shall be applicable to appropriations initiated or perfected pursuant to this article.

1228.7. (a) Any registrant may change the point of diversion or place of use by delivering to the board an amended registration form in accordance with Section 1228.3, including payment of the registration fee specified in subdivision (a) of Section 1228.8, except that the purpose of the use may not be changed and the change may not operate to the injury of any legal user of the water involved.

(b) Any completed amended registration of water use continues in effect the priority of right as of the date of the original completed registration.

(c) All provisions of this article regarding appropriations made pursuant thereto, including, but not limited to, provisions regarding enforcement, are applicable to the appropriation as described in the completed amended registration, except that the conditions established by the board pursuant to Section 1228.6 which are in effect at the time of completion of the amended registration shall supersede the conditions which were applicable to the original completed registration.

1228.8. (a) Every person registering a small domestic use of water shall pay to the board a registration fee of one hundred dollars (\$100).

(b) Every person renewing registration of a small domestic use of water shall pay to the board a renewal fee of fifty dollars (\$50).

1228.9. With regard to a small domestic use of water, no right to appropriate or use water subject to appropriation shall be initiated on and after January 1, 1989,

except upon compliance with this article, and this article shall be the exclusive means of acquiring and maintaining that right. Nothing in this article shall be construed as affecting any right initiated or acquired pursuant to permit or evidenced by license, and including any application filed but not permitted, prior to January 1, 1989.

1229. (Repealed by Stats. 1993, Ch. 38)

1229.1. This article does not apply to those stream segments for which the Director of Fish and Game establishes proposed streamflow requirements pursuant to Section 10002 of the Public Resources Code, notwithstanding the July 1, 1989, deadline for preparation of the requirements.

1229.2. (Repealed by Stats. 1993, Ch. 38.)

Article 3. Appropriation from Interstate Streams

1230. Upon any stream flowing across the State boundary, an appropriation of water in this State for beneficial use in another State may be made only when, under the laws of the latter, water may be lawfully diverted therein for beneficial use in this State.

1231. Upon any stream flowing across the state boundary a right of appropriation having the point of diversion and the place of use in another state and recognized by the laws of that state shall have the same force and effect as if the point of diversion and the place of use were in this State if the laws of that state give like force and effect to similar rights acquired in this State; provided, that this section shall not apply to the Walker River and its tributaries or claimed rights of appropriation therefrom in the State of Nevada, whether heretofore or hereafter initiated.

1232. Nothing in this article applies to interstate lakes, or streams flowing in or out of such lakes.

Article 4. Beneficial Use

1240. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such a purpose the right ceases.

1241. When the person entitled to the use of water fails to use beneficially all or any part of the water claimed by him, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, for a period of five years, such unused water may revert to the public and shall, if reverted, be regarded as unappropriated public water. Such reversion shall occur upon a finding by the board following notice to the permittee and a public hearing if requested by the permittee.



1241.5. The laws of this State with respect to loss of water rights by nonuse, abandonment, prescription, and lack of diligence shall not apply to water rights appurtenant to or for use on any trust land for the period of five years following the conveyance by the United States of an unrestricted title to the land and the water rights appurtenant to or for use on such land.

As used in this section, "trust land" means any land in this State (a) to which the United States holds title in trust for any tribe, band, or other group of Indians, or for any particular Indian; or (b) owned by a particular Indian or any tribe, band, or group of Indians subject to a restriction against alienation imposed by the United States; or (c) held by the United States for the use of Indians in California, but not for any particular tribe, band, or group of Indians, or any particular Indian, if any part of such land is occupied by Indians or their families.

The Legislature hereby finds and declares that because of historical conditions, the Indians of California will not be in a position fully to utilize and to protect water rights owned by them when unrestricted title to trust land is conveyed to them by the United States. A period is required during which the laws with respect to loss of water rights by nonuse, abandonment, prescription, and lack of diligence are suspended with regard to such land and water rights so that they will not lose the benefit of the water rights and the opportunity to make productive utilization of their land. The Legislature further finds and declares that such a suspension of the laws of this State with regard to such water rights is in the public interest and will promote the public welfare since it will promote the economic and social well-being of the Indians and the communities in which they reside and will encourage the self-sufficiency of the Indians.

This section shall become operative upon the enactment of federal legislation authorizing the establishment of a California Indian Water Affairs Commission.

1241.6. When water appropriated for irrigation purposes is not used by reason of compliance with crop control or soil conservation contracts with the United States, and in other cases of hardship as the board may by rule prescribe, the three-year forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code, and the forfeiture period applicable to water appropriated prior to December 19, 1914, shall be extended by an additional period of not more than 10 years or the duration of any crop control or soil conservation contracts with the United States if less than 10 years.

1242. The storing of water underground, including the diversion of streams and the flowing of water on lands necessary to the accomplishment of such storage, constitutes a beneficial use of water if the water so stored is thereafter applied to the beneficial purposes for which the appropriation for storage was made.

1242.5. The board, subject to the provisions of Section 100 and whenever it is in the public interest, may approve appropriation by storage of water to be released for the purpose of protecting or enhancing the quality of other waters which are put to beneficial uses.

1243. The use of water for recreation and preservation and enhancement of fish and wildlife resources is a beneficial use of water. In determining the amount of water available for appropriation for other beneficial uses, the board shall take into account, whenever it is in the public interest, the amounts of water required for recreation and the preservation and enhancement of fish and wildlife resources.

The board shall notify the Department of Fish and Game of any application for a permit to appropriate water. The Department of Fish and Game shall recommend the amounts of water, if any, required for the preservation and enhancement of fish and wildlife resources and shall report its findings to the board.

This section shall not be construed to affect riparian rights.

1243.5. In determining the amount of water available for appropriation, the board shall take into account, whenever it is in the public interest, the amounts of water needed to remain in the source for protection of beneficial uses, including any uses specified to be protected in any relevant water quality control plan established pursuant to Division 7 (commencing with Section 13000) of this code.

This section shall not be construed to affect riparian rights.

1244. The sale, lease, exchange, or transfer of water or water rights, in itself, shall not constitute evidence of waste or unreasonable use, unreasonable method of use, or unreasonable method of diversion and shall not affect any determination of forfeiture applicable to water appropriated pursuant to the Water Commission Act or this code or water appropriated prior to December 19, 1914.

This section does not constitute a change in, but is declaratory of, existing law.

Article 5. Liability Within a Watershed

1245. Every municipal corporation of this State, and every person, firm or corporation engaged in supplying water to any municipal corporations for municipal, domestic or other uses, who enters any watershed, or any lands, streams or waters in the watershed for the purpose of acquiring or increasing a water supply for such purpose, or for the purpose of taking, diverting or transporting water for use by or in a municipal corporation, or for the purpose of supplying the needs of any municipal corporation, or its inhabitants, with water for the enumerated uses, shall be liable to all persons, firms and corporations, their heirs, representatives and successors, and to municipal corporations, districts and political subdivisions of this State whose property, business, trade, profession or occupation is within or conducted or carried on within the watershed entered, for all damage suffered or sustained by them either directly or indirectly because of injury, damage, destruction or decrease in value of any such property, business, trade, profession or occupation resulting from or caused by the taking of any such lands or waters, or by the taking, diverting or transporting of water from such watershed to and for use by or in any such municipal corporation.

1246. For the purpose of ascertaining the amount of any damage claimed to have been suffered or sustained by reason of any of the acts or things mentioned



in Section 1245, every municipal corporation and every person, firm or corporation causing any such damage, is authorized to enter into an agreement for the arbitration or compromise of any claims, and all of the laws of this State relating to arbitration of controversies are made applicable to such claims.

1247. Nothing in this article shall confer the right to recover damages resulting directly or indirectly by reason of the construction, operation or maintenance of any conduit, pipe line, canal, ditch, aqueduct, reservoir, power transmission line or power house.

1248. This article shall be liberally construed.

CHAPTER 2. APPLICATIONS TO APPROPRIATE WATER

Article 1. General Provisions

1250. The board shall consider and act upon all applications for permits to appropriate water and shall do all things required or proper relating to such applications.

1250.5. The board shall consider and act upon all applications for permits to appropriate water which propose, as a primary purpose of the application, the development of small hydroelectric energy facilities at an existing dam, canal, or conduit, up to and including 30 megawatts, or the development of any other hydroelectric facility with a generating capacity of five megawatts or less, within one year from the date a complete application and an instream beneficial use assessment have been filed with the board, except that the assessment need not be filed if the streamflow regime will not be changed, and except that final board action may be continued for a reasonable time not to exceed one year upon the request of the applicant or upon a finding by the board that the additional time is necessary to determine (1) if unappropriated water is available or (2) the effect upon instream uses.

1251. The board shall make such investigations of the water resources of the State as may be necessary for the purpose of securing information needed in connection with applications for appropriations of water.

1252. Any person may apply for and secure from the board, in conformity with this part and in conformity with reasonable rules and regulations adopted from time to time by it, a permit for any unappropriated water.

1252.1. An appropriation of water of any stream or other source of water under this part does not confer authority upon the appropriator to prevent or interfere with soil conservation practices above the point of diversion in the watershed in which such stream or other source originates, which practices do not themselves constitute an appropriation for which a permit is required by this part.

1252.5. All rights and privileges conferred by this part upon any person in relation to the appropriation of water are likewise conferred upon the United States, the State, and any entity or organization capable of holding an interest in real property in this State.

1253. The board shall allow the appropriation for beneficial purposes of unappropriated water under such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated.

1254. In acting upon applications to appropriate water the board shall be guided by the policy that domestic use is the highest use and irrigation is the next highest use of water.

1255. The board shall reject an application when in its judgment the proposed appropriation would not best conserve the public interest.

1256. In determining public interest under Sections 1253 and 1255, the board shall give consideration to any general or co-ordinated plan looking toward the control, protection, development, utilization, and conservation of the water resources of the State, including The California Water Plan, prepared and published by the Department of Water Resources or any predecessor thereof and any modification thereto as may be adopted by the department or as may be adopted by the Legislature by concurrent resolution or by law.

1257. In acting upon applications to appropriate water, the board shall consider the relative benefit to be derived from (1) all beneficial uses of the water concerned including, but not limited to, use for domestic, irrigation, municipal, industrial, preservation and enhancement of fish and wildlife, recreational, mining and power purposes, and any uses specified to be protected in any relevant water quality control plan, and (2) the reuse or reclamation of the water sought to be appropriated, as proposed by the applicant. The board may subject such appropriations to such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest, the water sought to be appropriated.

1257.5. The board, in acting on applications to appropriate water, shall consider streamflow requirements proposed for fish and wildlife purposes pursuant to Sections 10001 and 10002 of the Public Resources Code. The board may establish such streamflow requirements as it deems necessary to protect fish and wildlife as conditions in permits and licenses in accordance with this division.
(Added by Stats.1985, Ch. 1259.)

1258. In acting upon applications to appropriate water, the board shall consider water quality control plans which have been established pursuant to Division 7 (commencing with Section 13000) of this code, and may subject such appropriations to such terms and conditions as it finds are necessary to carry out such plans.



1259. In acting upon applications to appropriate water, the board shall consider the state goal of providing a decent home and suitable living environment for every Californian.

Article 2. Contents of Applications

1260. Every application for a permit to appropriate water shall set forth all of the following:

- (a) The name and post office address of the applicant.
 - (b) The source of water supply.
 - (c) The nature and amount of the proposed use.
 - (d) The location and description of the proposed headworks, ditch, canal, and other works.
 - (e) The proposed place of diversion.
 - (f) The place where it is intended to use the water.
 - (g) The time within which it is proposed to begin construction.
 - (h) The time required for completion of the construction.
 - (i) The time for the complete application of the water to the proposed use.
 - (j) All data and information reasonably available to applicant or that can be obtained from the Department of Fish and Game concerning the extent, if any, to which fish and wildlife would be affected by the appropriation, and a statement of any measures proposed to be taken for the protection of fish and wildlife in connection with the appropriation.
 - (k) Sufficient information to demonstrate a reasonable likelihood that unappropriated water is available for the proposed appropriation.
- (Amended by Stats.1997, Ch. 323.)*

1261. All applications shall be accompanied by as many copies of such maps, drawings, and other data as may be prescribed or required by the board, and such maps, drawings, and other data are part of the application.

1262. If for agricultural purposes the application shall give the legal subdivisions of the land and the acreage to be irrigated, as near as may be.

1263. If for power purposes the application shall state the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the use to which the power is to be applied.

1264. If for municipal water supply the application shall state the present population to be served, and, as near as may be, the future requirements of the city.

1265. If for mining purposes the application shall state the nature and location of the mines to be served and the methods of supplying and utilizing the water.

1266. If for storage in a reservoir the application shall state the height of dam, the capacity of reservoir, and the use to be made of the impounded waters, except that for storage underground these additional requirements as to height of dam and capacity of reservoir shall be given as near as may be.

Article 3. Defective Applications

1270. A defective application made in a bona fide attempt to conform to the rules and regulations of the board and to the law secures to the applicant a priority of right as of the date of the application until he or she is notified in what respect his application is defective, and the applicant shall be allowed 60 days after notice of the defect, or any additional period of time that the board agrees to, in which to file an amended and perfected application.

(Amended by Stats.1997, Ch. 323.)

1271. If, within the period provided, the applicant does not file an amended and perfected application, the application shall be rejected and canceled, unless for good cause shown the board allows the applicant to file a further amended and perfected application.

(Amended by Stats.1997, Ch. 323.)

Article 4. Supplemental Information

1275. After an application has been perfected, the board may request additional information reasonably necessary to clarify, amplify, correct, or otherwise supplement the information required to be submitted under Article 2 (commencing with Section 1260) or Article 3 (commencing with Section 1270). The board shall provide a reasonable period for submitting the information. The additional information may include, but is not limited to, any of the following:

(a) Information needed to demonstrate that unappropriated water is available for appropriation.

(b) Information needed to comply, or demonstrate compliance with, any applicable requirements of the Fish and Game Code or the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.).

(c) Information needed to comply with Division 13 (commencing with Section 21000) of the Public Resources Code.

(Added by Stats.1997, Ch. 323.)

1276. If, within the period provided, the applicant does not provide the information requested under Section 1275, the application shall be canceled, unless for good cause shown the board allows additional time in which to submit the requested information.

(Added by Stats.1997, Ch. 323.)

CHAPTER 3. NOTICE OF APPLICATION

Article 1. Contents of Notice

1300. As soon as practicable after the receipt of an application for a permit to appropriate water which conforms to the rules and regulations of the board and to law, the board shall issue and deliver a notice of the application (a) to the

applicant, (b) to the district attorney of each county wherein the applicant proposes to divert water under the application, and (c) to the board of supervisors of each county wherein the applicant proposes to divert water under the application.

- 1301.** The notice shall specify all of the following:
- (a) The number of the application.
 - (b) The name and address of the applicant.
 - (c) The date of filing.
 - (d) The source of supply.
 - (e) The amount applied for.
 - (f) The season of diversion.
 - (g) The location of the point of diversion.
 - (h) The use to be made.
 - (i) The location of the place of use.
 - (j) The date of issuance of the notice.
 - (k) Such other information as the board deems necessary.

1302. If the application is for more than three cubic feet per second or for more than 200 acre-feet per annum of storage, the notice shall state that protests against the approval of the application may be filed within 60 days from the date of issuance of the notice or within such further time as the board may, for good cause shown, allow.

1303. If the application is for three cubic feet or less per second, or for 200 acre-feet or less per annum of storage, the notice shall state that protests may be filed within 40 days from date thereof or within such further time as the board may, for good cause shown, allow.

1304. The notice shall contain appropriate general information as to what protests against the approval of the application shall contain in order to accord with the requirements of law and the rules and regulations of the board.

Article 2. Publication of Notice

1310. If the application is for more than three cubic feet per second or for more than 200 acre-feet per annum of storage the notice of application shall be published in accordance with this article.

1311. Upon receipt of notice of an application coming under this article, the applicant shall cause it to be published as directed by the board.

1312. The notice shall be published at the expense of the applicant at least once a week for three consecutive weeks, commencing within 20 days of the date of issuance of the notice, in a newspaper having a general circulation and published within the county wherein the point of diversion lies, or, if there are points of diversion in more than one county, in each county in which a point of diversion lies.

1313. In case there is no newspaper published within the appropriate county publication shall be made in a newspaper having a general circulation within the county.

1314. (Repealed by Stats.1970, Ch. 773.)

1315. Proof of publication shall be filed by the applicant within 60 days from the date of issuance of the notice.

1316. Proof of publication shall be by copy of the notice as published attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the notice.

1317. The board may cancel any application for failure of the applicant to file proof of publication in accordance with this article, provided the board first gives the applicant written notice of such possible cancellation and 15 days in which to file proof of publication.

Article 3. Posting and Mailing Notice

1320. Notice of an application for three cubic feet or less per second or for 200 acre-feet or less per annum of storage shall be given by posting and mailing in accordance with this article.

1321. Upon the date of issuance of notice of an application coming under this article the board shall mail three copies of the notice to the applicant by registered mail and shall also send a copy by registered mail to each person who is known to the board and who in its judgment is interested in the application because of ownership or location in the vicinity of the proposed appropriation.

1322. The applicant shall post the notice within 20 days of the date of issuance thereof in at least two conspicuous places in the locality to be affected by the proposed appropriation.

1323. Proof of posting shall be by affidavit of the applicant or the person posting notice on behalf of the applicant and shall be filed within 40 days from the date of issuance of notice.

1324. The board may cancel any application for failure of the applicant to file proof of posting in accordance with this article, provided the board first gives the applicant written notice of such possible cancellation and 15 days in which to file proof of posting.

CHAPTER 4. PROTEST OF APPLICATION

1330. Any person interested may, within the time allowed in the notice of application or within such further time as may, for good cause shown, be allowed by the board, file with it a written protest against the approval of an application.

1331. The protest shall meet all of the following requirements:

- (a) State the name and address of the protestant.
- (b) Be signed by the protestant, or the protestant's agent or attorney.
- (c) Clearly and specifically set forth the protestant's objections to the approval of the application, and state the bases for these objections.
- (d) Contain other appropriate information and be in the form provided in the rules and regulations of the board.
- (e) Be served on the applicant by the protestant by mailing a duplicate copy of the protest to the applicant or through service undertaken in another manner determined to be adequate by the board.

(Amended by Stats.1997, Ch. 323.)

1332. The board may request from the protestant additional information reasonably necessary to clarify, amplify, correct, or otherwise supplement the information required to be submitted under Section 1331. The board shall provide a reasonable period for submitting the information, and may allow additional time for good cause shown.

(Amended by Stats.1997, Ch. 323.)

1333. The protestant and the applicant shall make a good faith effort to resolve the protest within 180 days from the date on which the period provided under Section 1330 expires. For good cause, the board may allow additional time for the protestant and the applicant to attempt to resolve the protest.

(Amended by Stats.1997, Ch. 323.)

1334. The board may request from the protestant or the applicant additional information that the board determines is reasonably necessary to attempt to resolve the protest. The board shall provide a reasonable period for submitting the information, and may allow additional time for good cause shown.

(Amended by Stats.1997, Ch. 323.)

1335. (a) The board may cancel a protest or application for failure to provide information requested by the board under this article within the period provided.

(b) Except as provided in subdivisions (c) and (d), a protest shall not be canceled for failure to submit information not in the possession or under the control of the protestant if the protest is in compliance with Section 1331 and the applicant is or could be required to submit the information under Section 1260 or 1275.

(c) If a protest is based on interference with a prior right, the board may cancel the protest if the protestant fails to submit any of the following information requested by the board:



(1) Information that the protestant is required to submit to the board to comply with Part 5.1 (commencing with Section 5100) during any period after the protest is filed.

(2) Information that is reasonably necessary to determine if the protestant has a valid water right.

(3) Information concerning the protestant's historical, current, or proposed future diversion and use of water that is reasonably necessary to determine if the proposed appropriation will result in injury to the protestant's exercise of its water right.

(d) If the protest is based on an allegation that the proposed appropriation would not be in the public interest, would adversely affect public trust uses, or would have adverse environmental impact, the board may cancel the protest for failure to submit information requested by the board if the board determines both of the following:

(1) The public review period has expired for any draft environmental document or negative declaration required to be circulated for public review and comment pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) In the absence of the requested information, there is no substantial evidence in light of the whole record to support the allegation.

(Amended by Stats.1997, Ch. 323.)

CHAPTER 5. PROCEEDINGS ON APPLICATION

Article 1. Notice of Hearing

1340. Notice of hearing on a protested application shall be given by mailing notice not less than 20 days before the date of hearing to both the applicant and protestant by registered mail.

1341. The notice of hearing on a protested application shall state the names of the applicant and protestant, the time and place fixed for the hearing, and such other appropriate information as may be deemed advisable by the board.

1342. If a hearing is held on an unprotested application, notice of hearing shall be given by mailing notice not less than 20 days before the date of hearing.

Article 1.5. Minor Protested Applications Procedure

1345. The Division of Water Rights shall conduct a field investigation of all minor protested applications. The board shall notify the parties of the field investigation not less than 20 days prior to conducting the field investigation, to enable the parties to attend and present information to the board.

(Amended by Stats.1997, Ch. 323.)



1346. The Division of Water Rights may request the parties to submit information in support of their positions. The Division of Water Rights may request information before, during, or after the field investigation. After the field investigation, the Division of Water Rights may conduct additional proceedings in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats.1997, Ch. 323.)

1347. Based upon the field investigation and any other information obtained under this article, the Division of Water Rights shall issue a decision unless the board in its discretion determines that additional proceedings should be conducted under Section 183. A decision of the Division of Water Rights is subject to review as provided in Chapter 4 (commencing with Section 1120) of Part 1.

(Added by Stats.1997, Ch. 323.)

1348. For purposes of this article, a minor application shall mean any application which does not involve direct diversions in excess of three cubic-feet per second or storage in excess of 200 acre-feet per year.

Article 2. Action on Application

1350. The board may grant, or refuse to grant a permit and may reject any application, after hearing.

1351. No hearing is necessary in order to issue a permit upon an unprotested application, or if undisputed facts support the issuance of the permit and there is no disputed issue of material fact, unless the board elects to hold a hearing. No hearing is necessary to reject an application after notice, if the application is defective, the applicant fails to provide information requested by the board, or undisputed facts support the denial of the application and there is no disputed issue of material fact, unless the board elects to hold a hearing.

(Amended by Stats.1997, Ch. 323.)

1352. Upon failure of any party in interest to appear at a hearing or show good cause within five days thereafter for his failure, final action may be taken without further hearing.

1353. In the conduct of hearings technical rules of evidence need not be applied.

1354. (Repealed by Stats.1977, Ch. 562.)

1355. (Repealed by Stats.1977, Ch. 562.)



Article 2.5. Reconsideration and Amendment of Decisions & Orders

1357-1359. (Repealed by Stats. 1996, Ch. 659)

Article 3. Review by Court of Action on Application [Repealed]

1360. (Repealed by Stats. 1996, Ch. 659)

1361-1363. (Repealed by Stats. 1957, Ch. 947.)

CHAPTER 6. PERMITS

Article 1. Prerequisites to Issuance of Permit

1375. As prerequisite to the issuance of a permit to appropriate water the following facts must exist:

- (a) There must be an applicant.
- (b) The application must contain the matter and information prescribed by this division and be in the form required by the board.
- (c) The intended use must be beneficial.
- (d) There must be unappropriated water available to supply the applicant.
- (e) All fees due must be paid.

Article 2. Issuance of Permit

1380. Upon the approval of an application the board shall issue a permit.

1381. The issuance of a permit gives the right to take and use water only to the extent and for the purpose allowed in the permit.

1382. All permits shall be under the terms and conditions of this division.

Article 3. Permit Terms and Conditions

1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division, but no longer.

1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State



therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division, or for any rights granted or acquired under the provisions of this division, in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division.

1393. The board shall include as a condition in any permit under which a reservoir with an impounding capacity of 50 acre-feet or more is to be constructed, that the permittee shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

1394. (a) The board may reserve jurisdiction, in whole or in part, to amend, revise, supplement, or delete terms and conditions in a permit under either of the following circumstances:

(1) If the board finds that sufficient information is not available to finally determine the terms and conditions which will reasonably protect vested rights without resulting in waste of water or which will best develop, conserve, and utilize in the public interest the water sought to be appropriated, and that a period of actual operation or time for completion of studies will be necessary in order to secure the required information.

(2) If the application or applications being acted upon represent only part of a coordinated project, other applications for the project being pending, and the board finds that the coordinated project requires coordinated terms and conditions which cannot reasonably be decided upon until a decision is reached on the other pending applications.

(b) Jurisdiction shall be reserved under this section for no longer period of time than the board finds to be reasonably necessary, and in no case shall jurisdiction be exercised after the issuance of the license. The jurisdiction shall be exercised only after notice to the parties and a hearing.

(Amended by Stats.1987, Ch. 56; Amended by Stats.1996, Ch. 659.)

Article 4. Application to Beneficial Use and Construction of Works

1395. Actual construction work upon any project shall begin within the time specified in the permit, which time shall not be less than 60 days from the date of the permit.

1396. The construction of the work thereafter and the utilization of water for beneficial purposes shall be prosecuted with due diligence in accordance with this division, the terms of the permit, and the rules and regulations of the board.

1397. The work shall be completed and the water applied to beneficial use in accordance with this division, the rules and regulations of the board, and the terms of the permit and within the period specified in the permit.

1398. (a) The period specified in the permit for beginning construction work, for completion of construction work, for application of the water to beneficial use, or any or all of these periods may, for good cause shown, be extended by the board.

(b) After any hearing on a petition to extend the period or periods, the board may revoke the permit in accordance with Section 1410.

Article 5. Revocation of Permit

1410. (a) There shall be cause for revocation of a permit if the work is not commenced, prosecuted with due diligence, and completed or the water applied to beneficial use as contemplated in the permit and in accordance with this division and the rules and regulations of the board.

(b) A permit may be revoked under either of the following procedures:

(1) If, after a hearing on a petition for extension of time to complete a project and apply water to beneficial use, the board finds that cause exists to revoke the permit, the board may revoke the permit.

(2) If, after an investigation other than a hearing on a petition for extension of time, it appears that cause exists to revoke a permit, the board shall give notice of proposed revocation in writing, mailed in a sealed, prepaid postage and certified letter to the permittee at his or her last known address. If the permittee fails to request a hearing within the time provided under Section 1410.1, the board shall revoke the permit and declare the water subject to appropriation. After a hearing, when a hearing is requested by the permittee pursuant to Section 1410.1, the board may, upon a finding that cause exists, revoke the permit and declare the water subject to appropriation.

(Repealed and added by Stats. 1986, Ch. 670.)

1410.1. The notice of proposed revocation of the permit pursuant to paragraph (2) of subdivision (b) of Section 1410 shall contain a statement of facts and information upon which the proposed revocation is based, and shall include a statement substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the permittee is delivered or mailed to the board within 15 days after receipt of this notice, the board may act upon the proposed revocation of the permit without a hearing. Any request for a hearing may be made by delivering or mailing the request to the board at the address given on the notice.

(Amended by Stats. 1986, Ch. 670.)

1410.2. In any case when a permit is revoked without a hearing, as provided in Section 1410.1, the permittee, within 90 days of the date of the order of revocation, may file with the board a request to set aside the revocation, and the board, for good cause shown, may reinstate the permit.

1411-1415. (Repealed by Stats. 1996, Ch. 659)



CHAPTER 6.5. TEMPORARY PERMITS

1425. (a) Any person, whether or not an applicant, permittee, or licensee under provisions of this division other than this chapter, who has an urgent need to divert and use water may apply for, and the board may issue, a conditional, temporary permit without complying with other procedures or provisions of this division, but subject to all requirements of this chapter.

(b) Prior to issuing a permit pursuant to this chapter, the board shall make all of the following findings:

(1) The applicant has an urgent need for the water proposed to be diverted and used.

(2) The water may be diverted and used without injury to any lawful user of water.

(3) The water may be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

(4) The proposed diversion and use are in the public interest, including findings to support permit conditions imposed to ensure that the water is diverted and used in the public interest, without injury to any lawful user of water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

(c) "Urgent need," for the purposes of this chapter, means the existence of circumstances from which the board may in its judgment conclude that the proposed temporary diversion and use is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented; except that the board shall not find an applicant's need to be urgent if the board in its judgment concludes, if applicable, that the applicant has not exercised due diligence either (1) in making application for a permit pursuant to provisions of this division other than this chapter, or (2) in pursuing that application to permit.

(d) The board may delegate to any officer or employee of the board all or any of its functions under this chapter.

(Repealed & added by Stats. 1986, Ch 455; Amended by Stats. 1996, Ch. 667.)

1426. The application for a temporary permit shall be completed in accordance with the provisions of Section 1260 and shall be accompanied by such maps, drawings, and other data as may be required by the board, and the applicant shall pay an application fee, and a permit fee if a temporary permit is issued, both computed in accordance with the provisions of Chapter 8 (commencing with Section 1525) of this part.

1427. Before making the findings required by Section 1425, the board shall review available records, files, and decisions which relate to the availability of water from the source at the proposed point of diversion to serve the proposed temporary diversion and use, and which relate to the rights of downstream users; shall consult with representatives of the Department of Fish and Game; and shall make a field investigation, if necessary or desirable in the opinion of the board.

1428. The board may issue a temporary permit in advance of the notice required by this section. In all cases, whether or not a temporary permit has been issued, the board shall, as soon as practicable after the receipt of an application, issue and deliver to the applicant or permittee a notice of the application or permit, which includes the information required by Section 1301. Publication or posting of the notice shall be as follows:

(a) If the application or permit is for more than three cubic feet per second or for more than 200 acre-feet of storage, and if the permit is to remain in effect for more than 30 days, the notice shall be published by and at the expense of the applicant or permittee at the earliest practicable time, not to exceed 20 days from the date of issuance of the notice, in a newspaper having a general circulation and published within the county wherein the point of diversion lies. Proof of publication shall be by copy of the notice as published and made part of an affidavit filed with the board within 10 days of publication.

(b) In all other cases, unless the permit is to be in effect less than 10 days:

(1) The applicant or permittee shall post the notice in at least two conspicuous places in the locality to be affected by the diversion and use. Notices shall be posted not later than two days after receipt of the notice by the applicant or permittee. An affidavit containing proof of posting shall be filed with the board within seven days of the date of notice.

(2) The board shall send a copy of the notice by registered mail to each person who, in the judgment of the board, could be adversely affected by the temporary diversion and use.

(c) Regardless of the rate of diversion or the amount of storage, if the permit is to be in effect less than 10 days, the board shall exercise its discretion with respect to requiring notice, both before and after issuance of the temporary permit, and may require such proof of notice as it deems appropriate.

(d) Any interested person may file objection to the temporary diversion and use with the board and shall send a copy to the applicant or permittee.

(e) The board shall give prompt consideration to any objection, and may hold a hearing thereon, after notice to all interested persons.

(f) Failure of the permittee to comply with any requirement of this section shall result in the automatic termination of the temporary permit.

1429. The board shall supervise diversion and use of water under the temporary permit for the protection of all lawful users of waters and instream beneficial uses and for compliance with permit conditions.

(Amended by Stats. 1986, Ch. 455.)

1430. Any temporary permit issued under this chapter shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the board. Any temporary permit shall automatically expire 180 days after the date of its issuance, unless an earlier date is specified or it has been revoked.

1431. A temporary permit issued under this chapter may be renewed by the board. Requests for renewals shall be processed in the manner provided by this chapter



except that the permittee shall not be required to file duplicate maps, drawings or other data if they were furnished with the original application. Each such renewal shall be valid for a period not to exceed 180 days from the date of renewal.

CHAPTER 6.6. TEMPORARY URGENCY CHANGES

1435: (a) Any permittee or licensee who has an urgent need to change a point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for, and the board may issue, a conditional, temporary change order without complying with other procedures or provisions of this division, but subject to all requirements of this chapter.

(b) Prior to issuing a change order pursuant to this chapter, the board shall make all of the following findings:

(1) The permittee or licensee has an urgent need to make the proposed change.

(2) The proposed change may be made without injury to any other lawful user of water.

(3) The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

(4) The proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

(c) "Urgent need," for the purposes of this chapter, means the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented; except that the board shall not find a petitioner's need to be urgent if the board in its judgment concludes, if applicable, that the petitioner has not exercised due diligence either (1) in petitioning for a change pursuant to provisions of this division other than this chapter, or (2) in pursuing that petition for change.

(d) The board may delegate to any officer or employee of the board all or any of its functions under this chapter.

(Repealed & added by Stats. 1986, Ch. 455; Amended by Stats. 1996, Ch. 667.)

1436. The petition for a temporary change order shall be completed in accordance with the rules of the board, and the petitioner shall pay the fee required by Chapter 8 (commencing with Section 1525).

1437. Before making the findings required by Section 1435, the board shall review available records, files, and decisions which relate to the rights of other legal users of water, consult with representatives of the Department of Fish and Game, and make a field investigation if the investigation is necessary or desirable in the opinion of the board.

1438. (a) The board may issue a temporary change order in advance of the notice required by this section. In all cases, whether or not a temporary change

order has been issued, the board shall, as soon as practicable after the receipt of a petition, issue and deliver to the permittee or licensee a notice of the change order which includes the information required by the rules of the board.

(b) Publication or posting of the notice shall be as follows:

(1) If the permit or license is for more than three cubic feet per second or for more than 200 acre-feet of storage, and if the change order is to remain in effect for more than 30 days, the notice shall be published by, and at the expense of, the permittee or licensee at the earliest practicable time, not to exceed 20 days from the date of issuance of the notice, in a newspaper having a general circulation and published within the county wherein the point of diversion lies. Proof of publication shall be by copy of the notice as published and made part of an affidavit filed with the board within 10 days of publication.

(2) In all other cases, unless the change order is to be in effect less than 10 days:

(A) The permittee or licensee shall post the notice in at least two conspicuous places in the locality to be affected by the change. Notices shall be posted not later than two days after receipt. An affidavit containing proof of posting shall be filed with the board within seven days of the date of notice.

(B) The board shall send a copy of the notice by registered mail to each person who, in the judgment of the board, could be adversely affected by the temporary change.

(c) Regardless of the rate of diversion or the amount of storage, if the change order is to be in effect less than 10 days, the board shall exercise its discretion with respect to requiring notice, both before and after issuance of the change order, and may require such proof of notice as it deems appropriate.

(d) Any interested person may file an objection to the temporary change with the board, and the board shall send a copy of that objection to the permittee or licensee.

(e) The board shall give prompt consideration to any objection, and may hold a hearing thereon, after notice to all interested persons.

(f) Failure of the permittee or licensee to comply with any requirement of this section shall result in the automatic termination of the temporary change.

1439. The board shall supervise diversion and use of water under the temporary change order for the protection of all other lawful users of water and instream beneficial uses and for compliance with change order conditions.

(Amended by Stats.1986, Ch. 455.)

1440. Any temporary change order issued under this chapter shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the board. Any temporary change order shall automatically expire 180 days after the date of its issuance unless an earlier date is specified or it has been revoked.

1441. A temporary change order issued under this chapter may be renewed by the board. Requests for renewal shall be processed in the manner provided by



this chapter except that the permittee or licensee shall not be required to file duplicate maps, drawings, or other data if they were furnished with the original petition. Each such renewal shall be valid for a period not to exceed 180 days from the date of renewal.

1442. This chapter shall not apply to any permittee or licensee petitioning for a temporary change pursuant to Chapter 10.5 (commencing with Section 1725).

CHAPTER 7. PRIORITIES

Article 1. Priority of Application

1450. Any application properly made gives to the applicant a priority of right as of the date of the application until such application is approved or rejected. Such priority continues only so long as the provisions of law and the rules and regulations of the board are followed by the applicant.

Article 2. Effect of Issuance of Permit

1455. The issuance of a permit continues in effect the priority of right as of the date of the application and gives the right to take and use the amount of water specified in the permit until the issuance of a license for the use of the water or until the permit is revoked.

1456. (Repealed by Stats.1969, Ch. 1087.)

Article 3. Preferred Priorities of Municipalities

(See Section 1203.)

1460. The application for a permit by a municipality for the use of water for the municipality or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether it is first in time.

1461. The application for, or the granting of, a permit to any municipality to appropriate water does not authorize the appropriation of any water for other than municipal purposes.

1462. Where permission to appropriate is granted to any municipality for any quantity of water in excess of the existing municipal needs therefor, the board may, pending the application to beneficial use of the entire appropriation permitted, issue permits for the temporary appropriation of the excess of the permitted appropriation over and above the quantity being applied to beneficial use from time to time by the municipality.

1463. When the municipality desires to use the additional water granted in its application it may do so upon making just compensation for the facilities for



taking, conveying, and storing the additional water rendered valueless for said purposes to the person who constructed the facilities. The compensation, if not agreed upon, may be determined in the manner provided by law for determining the value of property taken by eminent domain proceedings.

1464. In lieu of the granting of such temporary permits for appropriation, the board may authorize the municipality to become as to such surplus a public utility, subject to the jurisdiction and control of the Public Utilities Commission of the State for such period from and after the date of the issuance of such permission to appropriate, as may be allowed for the application to municipal uses of the entire appropriation permitted.

(See Section 1203.)

Article 4. Priority of Reservoir Systems Constituting Single Unit

1475. In any case where a reservoir has been or shall hereafter under the provisions of this division be constructed, or surveyed, laid out, and proposed to be constructed, for the storage of water for a system, which water is to be used at one or more points under appropriations of water and rights held and owned by the person owning the reservoir site and constructing the reservoir, the reservoir, appropriations, and rights shall, in the discretion of the board constitute a single enterprise and unit, and work of constructing the reservoir, or work on any one of the appropriations shall, in the discretion of the board, be sufficient to maintain and preserve all applications for appropriations and rights thereunder.

Article 5. Applications in Aid of State Water Plan

1480. An application by the Department of Water Resources, or an application by the Department of Finance prior to July 5, 1956, in aid of any general or coordinated water plan has such priority as is now or may hereafter be provided by law.

Article 6. Applications by Governmental Agencies Discharging Disposal Water

1485. Any municipality, governmental agency, or political subdivision, operating waste disposal plants producing disposal water meeting the requirements of the appropriate regional board, and disposing of said water in the San Joaquin River may file an application for a permit to appropriate an equal amount of water, less diminution by seepage, evaporation, transpiration or other natural causes between the point of discharge and the point of recovery, downstream from said disposal plant and out of the San Joaquin River or the Sacramento-San Joaquin Delta. A permit to appropriate such amount of water may be granted by the board upon such terms and conditions as in the board's judgment are necessary for the protection of the rights of others. Water so appropriated may be sold or utilized for any beneficial purpose. The right to the use of water granted by this section shall not include water flowing in underground streams.



The Legislature finds and declares that the problems incident to the full utilization of the waters of the San Joaquin River and the Sacramento-San Joaquin Delta into which it flows, are unique and that a general law cannot be made applicable thereto.

Article 7. Priority of Applications for Hydroelectric Power

1490. Applications or petitions for retrofit hydroelectric plants at existing dams, canals, or conduits where the streamflow regime will not be changed and where there will be no significant adverse environmental impacts shall receive expedited processing by the board. The applicant shall not be required to show a need for the power that will be generated by the plant unless protests are filed that are not resolved.

1491. Applications for hydroelectric powerplants with a generating capacity not to exceed five megawatts, which do not impound water during times of high waterflow to be used to generate power during times of low waterflow, and which will not have any significant adverse environmental impacts shall receive expedited processing by the board. The applicant shall not be required to show a need for the power that will be generated by the plant unless protests are filed against the project that are not resolved.

CHAPTER 8. FEES

Article 1. Application Fees

1525. Every person making application for a permit to appropriate water shall pay to the board at the time of filing the application a filing fee of one hundred dollars (\$100).

(Amended by Stats. 1985, Ch. 819.)

1525.5. Every person making application for a permit to appropriate water subject to Section 1250.5 shall pay to the board an application fee which shall be in an amount determined by the board to cover the reasonable costs of the board and the Department of Fish and Game in evaluating and processing the application. The board shall reimburse the Department of Fish and Game for its actual costs incurred in evaluating applications submitted pursuant to Section 1250.5.

1526. The one hundred dollar (\$100) fee is a minimum fee but shall be a credit to the extent of one hundred dollars (\$100) whenever the fee due totals more than one hundred dollars (\$100) under the schedule provided in this article and, in that case, the further fee due shall be the total computed amount less one hundred dollars (\$100).

(Amended by Stats. 1985, Ch. 819.)



1527. Not later than five days after receipt of an application, the board shall notify the applicant by registered mail of the further amount of fee, if any, due under the schedule of fees provided in this article, and if there is a further amount due and it is not received within 30 days after the date of filing the application in the office of the board the application shall be rejected.

1527.5. An applicant who withdraws his application after receiving the notice called for by Section 1527 or whose application has been rejected for failure to pay the full application fee within the time required by law, shall be ineligible to file another application for a permit to appropriate the same water for a period of six months after such withdrawal or rejection.

1528. Such further fee as may be due shall be paid as provided in this article.

1529. For each cubic foot per second or fractional cubic foot per second of direct diversion from one cubic foot per second to and including 100 cubic feet per second, the fee is at the rate of ten dollars (\$10) per cubic foot per second.
(Amended by Stats.1985, Ch. 819.)

1529.1. For each cubic foot per second or fractional cubic foot per second of direct diversion over 100 cubic feet per second to and including 500 cubic feet per second, the fee is at the rate of twelve dollars (\$12) per cubic foot per second.
(Amended by Stats.1985, Ch. 819.)

1530. For each cubic foot per second or fractional cubic foot per second of direct diversion over 500 cubic feet per second to and including 2,000 cubic feet per second, the fee is at the rate of fifteen dollars (\$15) per cubic foot per second.
(Amended by Stats.1985, Ch. 819.)

1531. For each cubic foot per second or fractional cubic foot per second of direct diversion over 2,000 cubic feet per second, the fee is at the rate of twenty dollars (\$20) per cubic foot per second.
(Amended by Stats.1985, Ch. 819.)

1531.5. For power purposes, for each 200 theoretical horsepower or fraction thereof resulting from direct diversion, the fee is at the rate of two dollars (\$2) per 100 theoretical horsepower. This rate and the resulting fee shall be in lieu of rates otherwise provided in this article.
(Amended by Stats.1985, Ch. 819.)

1532. For each acre-foot or fractional acre-foot per annum of storage to and including 1,000 acre-feet per annum, the fee is at the rate of ten cents (\$.10) per acre-foot.
(Amended by Stats.1985, Ch. 819.)

1532.1. For each acre-foot or fractional acre-foot per annum of storage over 1,000 acre-feet per annum to and including 5,000 acre-feet per annum, the fee is at the rate of twelve cents (\$.12) per acre-foot.
(Amended by Stats.1985, Ch. 819.)



1532.2. For each acre-foot or fractional acre-foot per annum of storage over 5,000 acre-feet per annum to and including 100,000 acre-feet per annum, the fee is at the rate of fifteen cents (\$0.15) per acre-foot.

(Amended by Stats.1985, Ch. 819.)

1533. For each acre-foot or fractional acre-foot per annum of storage over 100,000 acre-feet per annum, the fee is at the rate of twenty cents (\$0.20) per acre-foot.

(Amended by Stats.1985, Ch. 819.)

1535. An annual application fee equal to the amount computed by using the schedules in this article shall be paid to the board commencing two years after the filing date of the application or the first anniversary date of the application following December 31, 1969, whichever is later, if the application is not then complete or disposition of the application is then being delayed at the applicant's request and continuing so long as the application remains incomplete or disposition of the application is delayed at the applicant's request. This section does not apply to applications filed pursuant to Section 10500 of this code prior to their assignment by the board.

1536. If an annual application fee is not paid when due the board shall notify the applicant by registered mail of the amount due and of the provisions of this section. If the fee is not received by the board within 30 days after the notice has been mailed, the application shall be canceled.

1540. (a) A fee equal to one-half the amount computed by using the schedules in Article 1 (commencing with Section 1525) based on the approved application amount shall be paid to the board at the time the permit is issued, except that no permit fee is required under Section 1525.5.

(b) The board shall notify the applicant by registered mail of the amount of the fee which shall be paid before issuance of the permit. If the fee is not received by the board within 30 days after the notice has been mailed the application shall be canceled.

(c) The minimum fee shall be one hundred dollars (\$100).

(Amended by Stats.1986, Ch. 670)

1541-1545. (Repealed by Stats.1969, Ch. 1087.)

Article 2.1. Other Fees

1546. Every person making application for an extension of time within which to begin construction, to complete construction, or to apply the water to full beneficial use under a permit shall pay to the board at the time of making the application a fee of fifty dollars (\$50).

(Amended by Stats.1985, Ch. 819.)

1547. Every person filing a petition for permission to change the point of diversion, place of use, or purpose of use pursuant to Chapter 10 (commencing with Section 1700) shall pay to the board at the time of filing the petition a fee of one hundred dollars (\$100).

(Amended by Stats.1985, Ch. 819.)

1547.1. Every person filing a petition for permission to make a transfer of water or water rights pursuant to Section 386, 1010, 1011, or 1025.5 or Chapter 10.5 (commencing with Section 1725) for use outside of the basin in which the water originates shall pay to the board at the time of filing the petition a fee equal to 25 percent of the amount computed by using the schedules in Article 1 (commencing with Section 1525).

(Added by Stats.1985, Ch. 819; Amended by Stats.1991, Ch. 847.)

1548. Every person filing a petition for a release from priority pursuant to Section 10504 shall pay to the board a fee based upon the schedule contained in Article 1 (commencing with Section 1525) of this chapter as applied to the application in favor of which release from priority is sought, except that no fee is required if an application fee was originally paid on such application.

1549. Every person filing a petition for the assignment of a state application pursuant to Section 10504 shall pay a fee based upon the schedules contained in Article 1 (commencing with Section 1525) of this chapter as applied to such application.

Article 3. Payment into Treasury

1550. All fees paid under the provisions of this chapter shall be paid at least once a month into the State Treasury by the board and shall be accompanied by a detailed statement thereof.

Article 4. Exemptions

1560. No fee shall be required from the United States on applications, permits, or licenses to appropriate water to be used in furtherance of projects under the supervision of the United States Bureau of Reclamation. However, the board is authorized to enter into contractual arrangements calling for the United States Bureau of Reclamation to reimburse the board, in whole or in part, for services furnished by the board, either directly or indirectly, in connection with, or for the protection of rights under, any applications, permits, or licenses of the United States Bureau of Reclamation.



CHAPTER 9. LICENSES

Article 1. Report of Completion

1600. Immediately upon completion of the construction of works and application of the water to beneficial use the permittee shall report the completion to the board.

Article 2. Examination and Inspection

1605. The board shall as soon as practicable after receiving the report of completion cause to be made a full inspection and examination of the works constructed and the use of water therefrom. The permittee shall furnish the board with such records, data, and information as may be required to enable the board to determine the amount of water that has been applied to beneficial use and whether the construction of the works and the use of the water therefrom is in conformity with law, the rules and regulations of the board, and the permit.

Article 3. Issuance or Refusal of License

1610. If the determination of the board as to completion is favorable to the permittee, the board shall issue a license which confirms the right to the appropriation of such an amount of water as has been determined to have been applied to beneficial use.

1610.5. Before issuing a license for an amount of water or season of use less than that specified in the permit, the board shall either obtain the consent of the permittee or afford him an opportunity to (a) show cause why the amount or season of use should not be reduced or, (b) request an extension of time pursuant to Section 1398.

1611. If the board determines that the construction and condition of the works or the use of water therefrom are not in conformity with the law, the rules and regulations of the board, or the terms of the permit, it may revoke the permit in the manner provided in Article 5 (commencing with Section 1410) of Chapter 6 of this part. The board may in its discretion allow a reasonable time for the permittee to correct discrepancies in the works or use of water before taking action to revoke the permit.

Article 4. Review by Court

1615-1618. (Repealed by Stats. 1996, Ch. 659)

Article 5. Contents and Conditions of License

1625. Each license shall be in such form and contain such terms as may be prescribed by the board.

- 1626.** All licenses shall be under the terms and conditions of this division.
- 1627.** A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division but no longer.
- 1628.** Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division, or for any rights granted or acquired under the provisions of this division, in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division.

1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property can not agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Article 6. Filing of Licenses and Orders with County Recorder

1650. A true copy of each license issued or of each order modifying or changing a license shall within 30 days after issuance thereof be recorded by the board in the office of the recorder of the county in which the point of diversion specified in the license lies or in case there are points of diversion lying in more than one county then in each of those counties in which a point of diversion lies and in



case the place or places of use specified in the license are in different counties than the point or points of diversion also in the county or counties in which the place or places of use lie.

1651. Whenever an order revoking a license in whole or in part becomes final a true copy of the order shall be recorded promptly by the board in the office or offices in which a copy of the license affected is recorded.

Article 7. Revocation of Licenses

1675. If at any time after a license is issued, the board finds that the licensee has not put the water granted under the license to a useful or beneficial purpose in conformity with this division or that the licensee has ceased to put the water to such useful or beneficial purpose, or that the licensee has failed to observe any of the terms and conditions in the license, the board, after due notice to the licensee and after a hearing, when a hearing is requested by the licensee pursuant to Section 1675.1, may revoke the license and declare the water to be subject to appropriation in accordance with this part. As used in this section "licensee" includes the heirs, successors, or assigns of the licensee.

1675.1. The notice of proposed revocation of the license pursuant to Section 1675 shall contain a statement of facts and information upon which the proposed revocation is based, and shall include a statement substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the licensee is delivered or mailed to the board within 15 days after receipt of this notice, the board may act upon the proposed revocation of the license without a hearing. Any request for a hearing may be made by delivering or mailing the request to the board at the address given on the notice.

1675.2. In any case when a license is revoked without a hearing, as provided in Section 1675.1, the licensee, within 90 days of the date of the order of revocation, may file with the board a request to set aside the revocation, and the board, for good cause shown, may reinstate the license.

1676-1677. (Repealed by Stats. 1996, Ch. 659)

CHAPTER 10. CHANGE OF POINT OF DIVERSION, PLACE OF USE, OR PURPOSE OF USE

1700. Water appropriated under the Water Commission Act or this code for one specific purpose shall not be deemed to be appropriated for any other or different purpose, but the purpose of the use of such water may be changed as provided in this code.



1701. At any time after notice of an application is given, an applicant, permittee, or licensee may change the point of diversion, place of use, or purpose of use from that specified in the application, permit, or license; but such change may be made only upon permission of the board.

1702. Before permission to make such a change is granted the petitioner shall establish, to the satisfaction of the board, and it shall find, that the change will not operate to the injury of any legal user of the water involved.

1703. After filing a petition for permission to make a change, the petitioner, in case the board so requires, shall cause notice thereof to be given or published in the manner prescribed by the board. In all cases the petitioner shall notify the Department of Fish and Game in writing of proposed change.
(Amended by Stats.1991, Ch. 663.)

1704. If at any time prior to the granting of permission to make such a change a protest is filed with the board against allowance of the proposed change the board shall fix a time and place for the hearing of the petition and of objections thereto.

1704.1. The Division of Water Rights shall conduct a field investigation of all minor protested petitions for change. The board shall notify the parties of the field investigation not less than 20 days prior to conducting the field investigation, to enable the parties to attend and present information to the board.
(Amended by Stats.1997, Ch. 323.)

1704.2. The Division of Water Rights may request the parties to submit information in support of their positions. The Division of Water Rights may request information before, during, or after the field investigation. After the field investigation, the Division of Water Rights may conduct additional proceedings in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.
(Added by Stats.1997, Ch. 323.)

1704.3. Based upon the field investigation and any other information obtained under this chapter, the Division of Water Rights shall issue an order acting on the minor petition for change unless the board in its discretion determines that additional proceedings should be conducted under Section 183. An order of the Division of Water Rights is subject to review as provided in Chapter 4 (commencing with Section 1120) of Part 1.
(Added by Stats.1997, Ch. 323.)

1704.4. For purposes of this chapter, a minor petition for change shall mean any petition which does not involve direct diversions in excess of three cubic-feet per second or storage in excess of 200 acre-feet per year.

1705. After the hearing the board shall grant or refuse, as the facts warrant, permission to change the point of diversion, place of use, or purpose of use.



1705.5. (Repealed by Stats. 1996, Ch.659)

1706. The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code may change the point of diversion, place of use, or purpose of use if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made.

1707. (a) Any person entitled to the use of water, whether based upon an appropriative, riparian, or other right, may petition the board pursuant to this chapter, Chapter 6.6 (commencing with Section 1435) or Chapter 10.5 (commencing with Section 1725) for a change for purposes of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation in, or on, the water.

(b) The board may approve the petition filed pursuant to subdivision (a), subject to any terms and conditions which, in the board's judgment, will best develop, conserve, and utilize, in the public interest, the water proposed to be used as part of the change, whether or not the proposed use involves a diversion of water, if the board determines that the proposed change meets all of the following requirements:

- (1) Will not increase the amount of water the person is entitled to use.
- (2) Will not unreasonably affect any legal user of water.
- (3) Otherwise meets the requirements of this division.

(Added by Stats.1991, Ch. 663.)

CHAPTER 10.5. CHANGE OF POINT OF DIVERSION, PLACE OF USE, OR PURPOSE OF USE INVOLVING THE TRANSFER OF WATER

Article 1. Temporary Changes

1725. A permittee or licensee may temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses. For purposes of this article, "consumptively used" means the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.

(Added by Stats.1988, Ch. 1145.)

1726. The permittee or licensee shall notify in writing the board and the Department of Fish and Game of a proposed temporary change. The notice shall

contain information indicating the amount of water consumptively used by the permittee or licensee, the amount of water proposed for transfer, the parties involved in the transfer, and any other information the board by rule may prescribe.

(Added by Stats.1988, Ch. 1145 and Amended by Stats.1991, Ch. 663.)

1727. (a) Upon receipt by the board of notification of a proposed temporary change, the board shall make an evaluation sufficient to determine both of the following:

(1) The proposed temporary change would not injure any legal user of the water, during any potential hydrologic condition, through resulting significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, reduction in return flows, or reduction in the availability of water within the watershed of the transferor.

(2) The proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(b) Upon completion of the evaluation under subdivision (a), and finding that no injury or unreasonable effect would result, the board shall so notify the permittee or licensee, and those legal users of water identified pursuant to subdivision (a), of its finding and the order approving the temporary change by personal delivery or registered mail. The temporary change shall be effective five days after the order becomes effective.

(c) If the board cannot satisfy the requirements under subdivision (a) within 60 days following receipt of notification of a proposed temporary change or within any extension of that period approved by the permittee or licensee, or cannot make the finding under subdivision (b), it shall so notify the permittee or licensee and those legal users of water identified pursuant to subdivision (a), by personal delivery or registered mail, and shall fix a time and place for a hearing on the issues set forth in subdivision (a).

(Added by Stats.1988, Ch. 1145.)

1728. For the purposes of this article, a temporary change means any change of point of diversion, place of use, or purpose of use involving a transfer or exchange of water or water rights for a period of one year or less.

(Added by Stats.1988, Ch. 1145.)

1729. A proposed temporary change under this article shall be exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

(Added by Stats.1988, Ch. 1145.)

1730. (Repealed by Stats. 1996, Ch. 659)

1731. Following the expiration of the temporary change period, all rights shall automatically revert to the original holder of the right without any action by the board.

(Added by Stats.1988, Ch. 1145.)



1732. The board shall not approve a temporary change if the board, in its judgment, concludes, if applicable, that the petitioner has not exercised due diligence in petitioning for a change pursuant to provisions of this division other than this article.

(Added by Stats.1988, Ch. 1145.)

Article 2. Long-Term Transfers

1735. The board may consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use. A long-term transfer shall be for any period in excess of one year.

1736. The board, after providing notice and opportunity for a hearing, including, but not limited to, written notice to, and an opportunity for review and recommendation by, the Department of Fish and Game, may approve such a petition for a long-term transfer where the change would not result in substantial injury to any legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(Amended by Stats.1991, Ch 663.)

1737. Following the expiration of the long-term transfer period, all rights shall automatically revert to the original holders of the right without any action by the board.

Article 3. Transfer of Decreed Rights

1740. Any water right determined under a court decree issued pursuant to Chapter 3 (commencing with Section 2500) of Part 3, after January 1, 1981, shall be transferable pursuant to this chapter and Chapter 10 (commencing with Section 1700). The court having the appropriate jurisdiction over the decreed rights may enter a supplemental decree modifying any rights involved upon motion of the board or any party with a vested water right.

(Repealed and added by Stats.1988, Ch. 1145.)

Article 4. Water Supplier Contracts

1745. As used in this article, the following terms have the following meanings:

(a) "Person" includes a public agency.

(b) "Water supplier" means a local public agency or private company supplying or storing water, or a mutual water company.

(Added by Stats.1992, Ch. 481.)

1745.02. A water supplier may, for a consideration to be specified in the contract, contract with persons entitled to service within the supplier's service area to reduce or eliminate for a specified period of time their use of water supplied by the water supplier.

(Added by Stats.1992, Ch. 481.)

1745.03. Services performed under a contract entered into pursuant to this chapter or Chapter 3.6 (commencing with Section 380) of Division 1 which is offered generally to all persons entitled to water service from the water supplier are public services generally provided by the public agency for purposes of paragraph (3) of subdivision (a) of Section 1091.5 of the Government Code.

(Added by Stats.1992, Ch. 481.)

1745.04. Water supplier may contract with a state drought water bank or with any other state or local water supplier or user inside or outside the service area of the water supplier to transfer, or store as part of a transfer, water if the water supplier has allocated to the water users within its service area the water available for the water year, and no other user will receive less than the amount provided by that allocation or be otherwise unreasonably adversely affected without that user's consent.

(Added by Stats.1992, Ch. 481; Amended by Stats.1993, Ch. 184.)

1745.05. (a) Water stored by the water supplier and water made available from either of the following sources may be transferred by the water supplier pursuant to Section 1745.04:

(1) Conservation or alternate water supply measures taken by individual water users or by the water supplier.

(2) Water developed pursuant to a contract by a water user to reduce water use below the user's allocation or to eliminate the use of water during the water year, including a contract to grow crops without the use of water from the water supplier, to fallow land, or to undertake other action to reduce or eliminate water use.

(b) The amount of water made available by land fallowing may not exceed 20 percent of the water that would have been applied or stored by the water supplier in the absence of any contract entered into pursuant to this article in any given hydrological year, unless the agency approves, following reasonable notice and a public hearing, a larger percentage.

(Added by Stats.1992, Ch. 481; Amended by Stats.1993, Ch. 589.)

1745.06. A water supplier may transfer water pursuant to Section 1745.04 whether or not the water proposed to be transferred is surplus to the needs within the service area of the water supplier.

(Added by Stats.1992, Ch. 481.)

1745.07. No transfer of water pursuant to this article or any other provision of law shall cause a forfeiture, diminution, or impairment of any water rights. A transfer that is approved pursuant to this article or any other provision of law is deemed to be a beneficial use by the transferor under this code.

(Added by Stats.1992, Ch. 481.)

1745.08. This article is in addition to, and not a limitation on, the authority of any public agency under any other provision of law, including, but not limited to, Article 1 (commencing with Section 1725).

(Added by Stats.1992, Ch. 481.)



1745.09. Nothing in this article does any of the following:

(a) Creates in any person a right to require any water supplier to enter into a contract providing for the reduction or elimination of water use or for the transfer of water.

(b) Creates in any person reducing water use any interest in the water rights of the water supplier.

(c) Limits or otherwise affects the jurisdiction of any regulatory public agency over water transfers.

(d) Makes any change in existing water rights.

(Added by Stats.1992, Ch. 481.)

1745.10. A water user that transfers surface water pursuant to this article may not replace that water with groundwater unless the groundwater use is either of the following:

(a) Consistent with a groundwater management plan adopted pursuant to state law for the affected area.

(b) Approved by the water supplier from whose service area the water is to be transferred and that water supplier, if a groundwater management plan has not been adopted, determines that the transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin.

(Added by Stats.1992, Ch. 481.)

1745.11. Nothing in this article prohibits the transfer of previously recharged groundwater from an overdrafted groundwater basin or the replacement of transferred surface water with groundwater previously recharged into an overdrafted groundwater basin, if the recharge was part of a groundwater banking operation carried out by direct recharge, by delivery of surface water in lieu of groundwater pumping, or by other means, for storage and extraction.

(Amended by Stats.1995, Ch. 833.)

1746. (Repealed by Stats.1991-92.)

CHAPTER 11. JOINT USE AND DEVELOPMENT

Article 1. General Provisions

1750. As used in this chapter "works" includes dams, tunnels, diversion works, ditches, and other works or constructions.

1751. As used in this chapter "power" includes electricity, electrical power, and other power.

1752. The board shall determine the pro rata and other costs provided for in this chapter.

Article 2. Joint Occupancy and Use

1775. If at any time it appears to the board, after a hearing of the persons interested and an investigation, that the full capacity of the works built or constructed, or being built or constructed, under an appropriation of water made pursuant to the Water Commission Act or this code has not developed or cannot develop the full capacity of the stream at the point where the works have been or are being built or constructed, and that the holder of the appropriation will not or cannot, within a period deemed to be reasonable by the board, develop the stream at that point to such capacity as the board deems to be required by the public good, the board may permit the joint occupancy and use, with the holder of the appropriation, to the extent necessary to develop the stream to its full capacity or to such portion of its capacity as may appear to the board to be advisable, by any persons applying therefor, of any such works.

1776. The board shall take into consideration the reasonable cost of the original and new work, the good faith of the applicant, the market for water or power to be supplied by the original and the new work, and the income or use that may be required to provide fair and reasonable returns upon such cost.

1777. The applicant shall be required to pay to the person owning the works a pro rata portion of the total cost of the old and the new works.

1778. If the water is used or to be used for irrigation or domestic purposes, the pro rata portion of the cost shall be based upon the proportion of the water used by the original and the subsequent users of the works.

1779. If the water is used or to be used for the generation of power, the pro rata portion of the cost shall be based upon the relative amount of power capable of being developed by the original and the new works.

1780. If a portion of the water is used or to be used for irrigation and another portion is used or to be used for the generation of power, the applicant shall pay to the person owning the works a pro rata portion of the total cost of the old and new works based upon the proportion of the relative amount of water used by each joint occupant and the income derived by each from the joint occupancy.

1781. If any of the water is used or to be used for purposes other than those specified in this article, the applicant shall pay to the person owning the works such a pro rata portion of the total cost of the old and new works as appears to the board to be just and equitable.

1782. The applicant shall also pay a proper pro rata share, based as above provided in this article, of the cost of maintaining the works, on and after beginning the occupancy and use thereof.

