

# **Statutory Water Rights Law**

**And Related Water Code Sections**

**(As amended, including Statutes of 2011)**



**JANUARY 2012**

**CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**



STATE OF CALIFORNIA  
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# 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.



# TABLE OF CONTENTS

## INTRODUCTION

The Statutes in Context .....	vii
Recent Judicial Decisions .....	viii

## CALIFORNIA CONSTITUTION

Article X, Section 2.....	xv
---------------------------	----

## WATER CODE

<b>GENERAL PROVISIONS .....</b>	<b>2</b>
---------------------------------	----------

### **DIVISION 1. GENERAL STATE POWERS OVER WATER.....4**

Chapter 1. General State Policy .....	4
Chapter 2. State Administration Generally .....	7
Chapter 2.5. Miscellaneous Powers of Department .....	11
Chapter 2.7. Water Diversion and Use Reports .....	13
Chapter 3.5. Water Conservation Programs .....	14
Chapter 3.6. Deference to Decisions by Local or Regional Agencies .....	16
Chapter 6. Water Reuse.....	18
Chapter 7. Water Transfer .....	18
Chapter 8. Water Measurement .....	20

### **DIVISION 2. WATER.....23**

#### **Part 1. General Provisions.....23**

Chapter 1. Definitions and Interpretation of Division .....	23
Chapter 1.5. Water Leases.....	33
Chapter 2. Administrative Provisions Generally .....	37
Chapter 3. Witnesses and Production of Evidence .....	40
Chapter 4. Reconsideration, Amendment & Judicial Review of Water Right Decisions & Orders .....	43

#### **Part 2. Appropriation of Water..... 45**

Chapter 1. General Provisions .....	45
Chapter 2. Applications to Appropriate Water .....	60
Chapter 3. Notice of Application .....	65
Chapter 4. Protest of Application .....	67
Chapter 5. Proceedings on Application.....	68
Chapter 6. Permits.....	70

## TABLE OF CONTENTS... Continued

Chapter 6.5. Temporary Permits .....	73
Chapter 6.6. Temporary Urgency Changes .....	75
Chapter 7. Priorities .....	77
Chapter 8. Water Right Fees .....	80
Chapter 9. Licenses .....	85
Chapter 10. Change of Point of Diversion, Place of Use, or Purpose of Use.....	88
Chapter 10.5. Change of Point of Diversion, Place of Use, or Purpose of Use Involving the Transfer of Water .....	93
Chapter 11. Joint Use and Development.....	100
Chapter 12. Enforcement of Water Rights .....	103
<b>Part 3. Determination of Water Rights .....</b>	<b>105</b>
Chapter 1. Reference by Courts of This State.....	105
Chapter 2. References in Federal Courts .....	108
Chapter 2.5. Adjudications to Protect the Quality of Groundwater .....	108
Chapter 3. Statutory Adjudications .....	109
Chapter 4. Modification of Decrees .....	122
<b>Part 5. Recordation of Water Extractions and Diversions .....</b>	<b>123</b>
<b>Part 5.1. Statements of Water Diversions and Use.....</b>	<b>126</b>
<b>DIVISION 4. WELLS, PUMPING PLANTS, CONDUITS AND STREAMS .....</b>	<b>130</b>
Chapter 6. Use of Streams as Conduits.....	130
<b>DIVISION 6. CONSERVATION, DEVELOPMENT, AND UTILIZATION OF STATE WATER RESOURCES .....</b>	<b>131</b>
<b>Part 1.5. The California Water Plan.....</b>	<b>131</b>
<b>Part 2. Appropriation of Water by Department of Water Resources .....</b>	<b>135</b>
<b>Part 2.6. Urban Water Management Planning.....</b>	<b>137</b>
Chapter 1. General Declaration and Policy.....	138
Chapter 2. Definitions .....	139
Chapter 3. Urban Water Management Plans .....	140
Chapter 4. Miscellaneous Provisions .....	150

# TABLE OF CONTENTS... Continued

<b>Part 2.75. Groundwater Management .....</b>	<b>151</b>
Chapter 1. General Provisions .....	151
Chapter 2. Definitions .....	153
Chapter 3. Groundwater Mangement Plans .....	153
Chapter 4. Finances.....	159
Chapter 5. Miscellaneous .....	160
<b>Part 2.78. Local Groundwater Management</b>	
<b>Assistance Act of 2000 .....</b>	<b>161</b>
<b>Part 2.8. Agricultural Water Management Planning.....</b>	<b>162</b>
<b>Part 2.10. Water Supply Planning to Support Existing</b>	
<b>and Planned Future Uses.....</b>	<b>168</b>
<b>Part 3. Central Valley Project .....</b>	<b>174</b>
Chapter 3. The Department of Water Resources.....	174
Chapter 10. Fish, Wildlife and Recreation	
in Connection with State Water Projects .....	175
Chapter 11. Water Conservation and Reclamation Projects ...	175
<b>Part 4.5. Sacramento-San Joaquin Delta .....</b>	<b>180</b>
Chapter 1. General Policy .....	180
<b>Part 4.6. San Joaquin River .....</b>	<b>182</b>
<b>DIVISION 7. WATER QUALITY .....</b>	<b>182</b>
Chapter 3. State Water Quality Control .....	182
Chapter 5.5. Compliance with the Provisions of the	
Federal Water Pollution Control Act as Amended in 1972.....	188
Chapter 7. Water Reclamation .....	200
Chapter 7.5. Water Recycling Act of 1991 .....	208
<b>DIVISION 35. SACRAMENTO-SAN JOAQUIN DELTA</b>	
<b>REFORM ACT.....</b>	<b>216</b>
<b>Part 1. General Provisions.....</b>	<b>216</b>
Chapter 1. Short Title and Legislative Findings .....	216
Chapter 2. Delta Policy .....	218
Chapter 3. Miscellaneous Provisions .....	219
Chapter 4. Definitions .....	221
<b>Part 2. Early Actions.....</b>	<b>224</b>

<b>Part 3. Delta Governance .....</b>	<b>226</b>
Chapter 3. Consistency of State and Local Public Agency Action.....	226
Chapter 4. Delta Watermaster .....	227

**PUBLIC RESOURCES CODE**

<b>DIVISION 10. STREAMFLOW PROTECTION STANDARDS .....</b>	<b>228</b>
---	------------

**FISH AND GAME CODE**

<b>DIVISION 2. DEPARTMENT OF FISH AND GAME .....</b>	<b>230</b>
Chapter 1. Organization and General Functions .....	230
Chapter 6. Fish and Wildlife Protection and Conservation .....	235
<b>DIVISION 6. FISH.....</b>	<b>239</b>
Chapter 3. Dams, Conduits, and Streams .....	239
Chapter 8. Salmon, Steelhead Trout, and Anadromous Fisheries Program Act .....	240

**GOVERNMENT CODE**

<b>TITLE 1. GENERAL</b>	
<b>DIVISION 7. MISCELLANEOUS.....</b>	<b>242</b>
Chapter 5. Joint Exercise of Powers .....	242
<b>TITLE 7. PLANNING AND LAND USE</b>	
<b>DIVISION 1. PLANNING AND ZONING .....</b>	<b>244</b>
Chapter 4.5. Review and Approval of Development Projects.....	244

**BUSINESS AND PROFESSIONS CODE**

<b>DIVISION 4. REAL ESTATE.....</b>	<b>260</b>
<b>Part 2. Regulation of Transaction.....</b>	<b>260</b>
Chapter 1. Subdivided Lands .....	260

*NOTE: LEGISLATIVE HISTORY NOTATIONS ARE PROVIDED FOR THOSE  
STATUTES AFFECTED BY LEGISLATION ENACTED IN 1985-2010*

# 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, 1707). 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 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 [123 Cal.Rptr. 1, 537 P.2d 1250]. 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.
- *People v. Forni* (1976) 54 Cal.App.3d 743 [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. 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. New Mexico* (1978) 438 U.S. 696. 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, including the relationship between the Board's water quality planning authority under the Porter-Cologne Water Quality Control Act (Water Code Section 13000 and following sections) and the Board's water right authority. This case also explains the Board's authority under the public trust doctrine and the prohibition against waste or unreasonable diversion or use of water to reopen water rights to implement water quality objectives.
- *Imperial Irrigation District v. State Water Resources Control Bd.* (IID I) (1986) 186 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 by a party that holds pre-1914 rights and receives water under federal contract. 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 [243 Cal.Rptr. 887, 749 P.2d 324], 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. 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) 225 Cal. App.3d 548 [275 Cal.Rptr. 250], cert. denied (1991) 502 U.S. 857. 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) 985 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. 700. 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. Borror* (1998) 61 Cal.App.4th 742 [72 Cal.Rptr. 2d 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.
- *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931 [91 Cal.Rptr.2d 66]. The Federal Power Act does not preempt state laws concerning environmental impacts of operation of a Federal Energy Regulatory Commission licensed multi-purpose water development project to the extent those state laws are applied to use of the project for consumptive use purposes.
- *State v. Superior Court (Underwriters at Lloyd’s London)* (2000) 78 Cal.App.4th 1019 [93 Cal.Rptr.2d 276]. Under section 102 of the Water Code, the State of California owns water in a regulatory, supervisory sense, but does not own it in a proprietary sense.
- *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224 [99 Cal.Rptr.2d 294, 5 P.3d 853]. In an adjudication of water rights, the doctrine of equitable apportionment does not provide authority for court to impose on a non-settling party a settlement among other parties that allocates rights to water in a manner that disregards the water right priorities of the claimants. A court may impose a physical

solution to achieve a practical allocation of water among competing interests, but a physical solution is a remedy that does not materially affect prior legal water rights, and does not provide a basis for allocating water in a manner that ignores the priorities of the parties asserting water rights.

- *People v. Murrison* (2002) 101 Cal.App.4th 349 [124 Cal.Rptr.2d 68]. A water right, whether modern or pre-1914, is not exempt from reasonable regulation, including the streambed alteration agreement requirements of the Fish and Game Code. A takings challenge to a requirement for a permit for the diversion of water raises a regulatory takings issue, not a physical invasion issue. An appropriative right is limited to the amount that can reasonably be put to beneficial use. Proof of when a claimed pre-1914 right was first exercised, without evidence of the amounts historically used throughout the period since then, is insufficient to establish a prima facie case of a claimed pre-1914 water right.
- *California Trout, Inc. v. Federal Energy Regulatory Commission* (9th Cir. 2002) 313 F.3d 1131. Although state water quality certification is required before the Federal Energy Regulatory Commission (FERC) may relicense a hydroelectric project, water quality certification is not required when FERC issues annual licenses allowing continued operation pending completion of relicensing proceedings.
- *Central and West Basin Water Replenishment Dist. v. Southern California Water Co.* (2003) 109 Cal.App.4th 891 [135 Cal.Rptr.2d 486].) It is appropriate for a water right adjudication decree to include an expansive reservation of jurisdiction. The unused storage space in a groundwater basin is a public resource. An adjudicated right to extract groundwater from a basin does not confer a right to unused storage space in the basin.
- *Central Delta Water Agency v. State Water Resources Control Bd.* (2004) 124 Cal. App.4th 245 [20 Cal.Rptr.3d 898]. The purpose and place of use must be specified before the Board issues a water right permit; permitting of an expansive place to allow water marketing without identifying customers before issuance of the permit is improper. Environmental documentation under the California Environmental Quality Act must include evaluation of the specific intended beneficial use or uses. Water Code section 1392 is not a restriction on sale of water where the transferor retains the water right.
- *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674 [39 Cal. Rptr.3d 189], cert. denied 127 S.Ct. 318. When a water quality control plan calls for an objective to be achieved by allocating responsibility to meet that objective in a water rights proceeding, water rights orders must fully implement that objective, and may not provide a time schedule for implementation unless the time schedule is in the water quality control plan. The “no injury” rule, which bars changes in a point of diversion, place of use or purposes of use if they result in injury to any legal user of water, applies only if the injury infringes on a legally protected interest. Because a riparian has no right to water stored by appropriators, the “no injury” rule does not apply to change in availability of water that results from changes in releases

from storage. Where a water right holder proposes a change to its water rights, the “no injury” rule does not bar a change that would reduce deliveries to a party that contracts for water deliveries from the water right holder unless that reduction in deliveries would constitute a breach of contract. The priority for area of origin uses over Central Valley Project and State Water Project exports under the watershed protection statute (Wat. Code, § 11460 et seq.) may be asserted by a party that has or applies for a water right permit or for a contract with the projects. The watershed protection statute does not give irrigation or municipal use within the area of origin priority over releases for water quality or instream beneficial uses within the area of origin. The place of use for the Central Valley Project’s water right permits is determined by the permits, applications, and accompanying maps, not the service areas of the districts that contract for water from the Central Valley Project.

- *Barnes v. Hussa* (2006) 136 Cal.App.4th 1358 [39 Cal.Rptr.3d 659]. Under Water Code section 1706, a party claiming it is injured by a change in a pre-1914 right has the burden of proof. Forfeiture for non-use cannot be imposed based on periods where water was not available under the appropriator’s right to divert.
- *Allegretti v. County of Imperial* (2006) 138 Cal.App.4th 1261 [42 Cal.Rptr.3d 122]. A takings challenge to pumping restrictions or other limitations on diversions raises a regulatory takings issue, not a physical invasion issue.
- *Arizona v. California* (2006) 547 U. S. 150. Consolidated decree entered in Colorado River adjudication.
- *S.D. Warren v. Maine Board of Environmental Protection* (2006) [546 U.S. 1148]. State water quality certification is required for Federal Energy Regulatory Commission (FERC) hydropower relicensing because the release of water from a hydroelectric dam is a “discharge” within the meaning of section 401 of the Clean Water Act. A State may address issues involving water project operation alteration of water quality, including loss of habitat from low flow conditions and blockage of fish passage or recreational use by dams, as part of water quality certification.
- *North Gualala Water Company v. State Water Resources Control Board* (2006) 139 Cal.App.4th 1577 [43 Cal.Rptr.3d 821]. The State Water Resources Control Board’s four-part test for determining whether a groundwater extraction is within the Board’s permitting authority is a proper interpretation of the statutory phrase “subterranean streams flowing through known and definite channels.” Water flowing in an alluvial channel may be subject to the Board’s permitting authority even if it does not constitute underflow of a surface stream. An impact test, making groundwater subject to the Board’s permitting authority based on the impact of pumping on surface flows, would not be consistent with the Water Code. Conditions imposed in water right permits and orders approving water right changes cannot be challenged as a defense to a proceeding brought to enforce those conditions.

- *El Dorado Irrigation District v. State Water Resources Control Board* (2006) 142 Cal.App.4th 937 [48 Cal.Rptr.3d 468]. The rule of priority applies only to natural or abandoned flows in a watercourse; no riparian or appropriator has a right to use water that was previously stored or imported by another. The priority for area of origin uses over Central Valley Project and State Water Project exports under the watershed protection statute (Wat. Code, § 11460 et seq.) does not entitle a water right holder in the area of origin to divert at times when natural or abandoned flows are insufficient to meet water quality objectives and the Central Valley Project and State Water Project are releasing water from storage to meet those objectives. The State Water Resources Control Board cannot assign responsibility for meeting water quality objectives in a manner that undermines water right priorities without substantial justification for doing so. When the Board issues a permit based on a state filed application the Board cannot impose a permit term designed to prevent diversion when natural flows are insufficient to meet water quality objectives and the Central Valley Project and the State Water Project are releasing water from storage to meet those objectives, unless the Board also modifies previously issued permits that are junior in priority to impose the same requirement.
- *North Kern Water Storage District v. Kern Delta Water District* (2007) 147 Cal.App. 4th 555 [54 Cal.Rptr.3d 578] Forfeiture is based on failure to use water available to an appropriator, including water available because senior water right holders are not diverting all of the water they are entitled to. Forfeiture of a senior water right does not necessarily make unappropriated water available, because junior appropriators may be able to make use of the forfeited water, during periods when there otherwise would not have been sufficient water available to fully satisfy those junior rights.
- *Phelps v. State Water Resources Control Board* (2007) 157 Cal.App.4th 89 [68 Cal. Rptr.3d 350] Conditions imposed in water right permits and licenses cannot be challenged as a defense to a proceeding brought to enforce those conditions. Standard water right Term 91, which requires permittees and licensees in the Bay/Delta watershed to curtail their diversions when the Central Valley Project and the State Water Project are making supplemental releases to meet water quality objectives, does not violate the watershed protection statute (Wat. Code, § 11460 et seq.) or the Delta Protection Act. (Id. § 12200 et seq.)
- *Nicoll v. Rudnick* (2008) 160 Cal.App.4th 550 [72 Cal.Rptr.3d 879]. Where a pre-1914 appropriative right has been adjudicated to an entire parcel, a conveyance of a portion of the parcel that does not expressly mention water rights conveys a share of the appropriative right in proportion to the portion of the entire parcel that is conveyed.
- *Brewer v. Murphy* (2008) 161 Cal.App.4th 928 [74 Cal.Rptr.3d 436]. A lower riparian owner who directly diverts water from an upper riparian owner's land may acquire prescriptive water rights against the upper riparian owner as a result of adverse use. Prescription must be shown by clear and convincing evidence.

- *California Farm Bureau Federation v. State Water Resources Control Board* (2011) 51 Cal.4th 421. The statute imposing annual water right permit and license fees establishes a regulatory fee, not a tax. Fees for water rights held by the United States Bureau of Reclamation may be allocated to federal water delivery contractors based on the contractor's beneficial interest.
- *In re Quantification Settlement Agreement Cases* (2011) 201 Cal. App. 4th 758. This case includes an extensive background discussion of Colorado River Allocations.

## 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.

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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)*

# 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.** (Renumbered Section 525, Added by Stats. 1991, Ch. 407 and Amended by Stats. 2004, Ch. 884.)

**CHAPTER 2**  
**STATE ADMINISTRATION GENERALLY**

**Article 1**  
**Department of Water Resources**

**138.10.** (a) On or before January 1, 2006, the director, in collaboration with the Secretary of Interior or his or her designee, shall prepare a plan to meet the existing permit and license conditions for which the department has an obligation, as described in the State Water Resources Control Board Decision No. 1641.

(b) The plan shall be designed to achieve compliance with the permit and license conditions described in subdivision (a). The director shall prepare the plan, and submit copies of the plan to the board and the California Bay-Delta Authority, prior to increasing the existing permitted diversion rate at the State Water Project's Harvey O. Banks Pumping Plant.

(c) Nothing in this section limits or restricts the department in its operation of the State Water Project due to failure of other water rights permittees or licensees to meet water quality conditions of their respective permits or licenses.

*(Added by Stats. 2004, Ch. 612.)*

**139.4.** (a) The department and the Department of Fish and Game shall determine the principal options for the delta.

(b) The department shall evaluate and comparatively rate each option determined in subdivision (a) for its ability to do the following:

(1) Prevent the disruption of water supplies derived from the Sacramento-San Joaquin Delta.

(2) Improve the quality of drinking water supplies derived from the delta.

(3) Reduce the amount of salts contained in delta water and delivered to, and often retained in, our agricultural areas.

(4) Maintain delta water quality for delta users.

(5) Assist in preserving delta lands.

(6) Protect water rights of the "area of origin" and protect the environments of the Sacramento-San Joaquin river systems.

(7) Protect highways, utility facilities, and other infrastructure located within the delta.

(8) Preserve, protect, and improve delta levees.

(c) The Department of Fish and Game shall evaluate and comparatively rate each option determined in subdivision (a) for its ability to restore salmon and other fisheries that use the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

(d) On or before January 1, 2008, the department and the Department of Fish and Game shall jointly report to the Legislature and Governor, in writing, with regard to the results of the evaluation required by Section 139.2 and the comparative ratings required by subdivisions (b) and (c).

*(Added by Stats. 2005, Ch. 573.)*

**141.5.** The department shall proceed with the construction of the South Delta Improvements Program, but shall not commence the operational phase of the program until the director certifies, in writing, to the Legislature that the department has completed the operational studies of the project and that the environmental review required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) includes a comparison between the implementation of the program and the maintenance of current operations.

*(Added by Stats 2006, Ch. 77.)*

### **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.** (a) 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.

(b) 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 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; Amended by Stats. 2010, Ch. 288)*

**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 herself or any waste discharger with which the board member is connected as a director, officer or employee, or in which the

board member has a financial interest in the decision within the meaning of Section 87103 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 the request of any person or on the Attorney General's 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.

*(Added by Stats. 1971, Ch. 793; Amended by Stats. 2002, Ch. 420.)*

**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 13000) 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 chairperson of the board from the membership of the board. The person so designated shall hold the office of chairperson at the pleasure of the Governor. The board shall elect a vice chairperson.

*(Amended by Stats. 2010, Ch. 288.)*

**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.** (a) The board shall have any powers, and may employ any legal counsel and other personnel and assistance, that may be necessary or convenient for the exercise of its duties authorized by law.

(b) 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 deputy director or division chief for each division, who shall supervise the work of the division and act as technical adviser to the board on functions under his or her jurisdiction.

(c) The Attorney General shall represent the board, or any affected regional water quality control board, or both the board and the regional board, and the state in litigation concerning affairs of the board, or a regional board, or both, unless the Attorney General represents another state agency that is a party to the action. In that case, the Attorney General may represent the board, the regional board, or both, with the written consent of the board and the other state agency, the board may contract for the services of private counsel to represent the board, the regional board, or both, subject to Section 11040 of the Government Code, or the legal counsel of the board may represent the board, the regional board, or both. Sections 11041, 11042, and 11043 of the Government Code are not applicable to the board. The legal counsel of the board shall advise and furnish legal services, except representation in litigation, to the regional boards upon their request.

*(Amended by Stats. 1971, Ch. 794; Amended by Stats. 2002, Ch. 396; Amended by Stats. 2010, Ch. 288.)*

**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 percent 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 the 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 superior court of the county where the well is situated.

*(Added by Stats. 1943, Ch. 368; Amended by Stats. 1953, Ch. 374; Amended by Stats. 1998, Ch. 931; Amended by Stats. 2003, Ch. 449.)*

**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 2.7**

### **Water Diversion and Use Reports**

**348.** (a) The department or the board may adopt emergency regulations providing for the electronic filing of reports of water diversion or use required to be filed with the department or board under this code, including, but not limited to, any report required to be filed under Part 5.1 (commencing with Section 5100) of Division 2 and any report required to be filed by a water right permittee or licensee.

(b) Emergency regulations adopted pursuant to this section, or any amendments thereto, shall be adopted by the department or the board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency

and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations or amendments to those regulations adopted under this section shall remain in effect until revised by the department or the board that adopted the regulations or amendments.

*(Added by Stats. 2009, 7th Ex. Sess, Ch. 2)*

### **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) (1) A public entity may undertake water conservation and public education programs using an information booklet or materials for use in connection with the use or transfer of real estate containing up to four residential units. For the purposes of this subdivision, the public entity may use water conservation materials prepared by the department.

(2) It is the intent of the Legislature that on or before December 31, 2007, a review of the program be conducted to obtain information on both of the following matters:

(A) The extent to which public entities have undertaken water conservation and public education programs referred to in paragraph (1).

(B) The extent to which water conservation may be attributable to the implementation of water conservation and public education programs referred to in paragraph (1).

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

(d) 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; Amended by Stats. 2004, Ch. 111.)*

**376.** (a) 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 that is printed, published, and circulated in the public entity. 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 public entity.

(b) The publication of ordinances or resolutions, as required by subdivision (a), may be satisfied by either of the following actions:

(1) The public entity may publish a summary of a proposed ordinance, resolution, or proposed amendment to an existing ordinance or resolution. The summary shall be prepared by an official designated by the governing body. A summary shall be published and a certified copy of the full text of the proposed ordinance, resolution, or amendment shall be posted in the office of the governing body at least five days prior to the governing body's meeting at which the proposed ordinance, resolution, or amendment is to be adopted. Within 15 days after adoption of the ordinance, resolution, or amendment, the governing body shall publish a summary of the ordinance, resolution, or amendment with the names of those members voting for and against the ordinance, resolution, or amendment and the official shall post in the office of the governing body a certified copy of the full text of the adopted ordinance, resolution, or amendment along with the names of those members voting for and against the ordinance, resolution, or amendment.

(2) If the official designated by the governing body determines that it is not feasible to prepare a fair and adequate summary of the proposed or adopted ordinance, resolution, or amendment, and if the governing body so orders, a display advertisement of at least one-quarter of a page in a newspaper of general circulation in the county shall be published at least five days prior to the governing body meeting at which the proposed ordinance, resolution, or amendment is to be adopted. Within 15 days after adoption of the ordinance, resolution, or amendment, a display advertisement of at least one-quarter of a page shall be published. The advertisement shall indicate the general nature of, and provide information about, the proposed or adopted ordinance, resolution, or amendment, including information sufficient to enable the public to obtain copies of the complete text of the ordinance, resolution, or amendment, and the names of those members voting for and against the ordinance, resolution, or amendment.

*(Added by Stats. 1977, Ch. 634; Amended by Stats. 2009, Ch. 332.)*

**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, 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.)*

## **CHAPTER 8. WATER MEASUREMENT**

### **Article 3. Declaration of Policy**

**521.** The Legislature further finds and declares all of the following:

(a) Water furnished or used without any method of determination of the quantities of water used by the person to whom the water is furnished has caused, and will continue to cause, waste and unreasonable use of water, and that this waste and unreasonable use should be identified, isolated, and eliminated.

(b) Water metering and volumetric pricing are among the most efficient conservation tools, providing information on how much water is being used and pricing to encourage conservation.

(c) Without water meters, it is impossible for homeowners and businesses to know how much water they are using, thereby inhibiting conservation, punishing those who conserve, and rewarding those who waste water.

(d) Existing law requires the installation of a water meter as a condition of water service provided pursuant to a connection installed on or after January 1, 1992, but the continuing widespread absence of water meters and the lack of volumetric pricing could result in the inefficient use of water for municipal and industrial uses.

(e) The benefits to be gained from metering infrastructure are not recovered if urban water suppliers do not use this infrastructure.

(f) This chapter addresses a subject matter of statewide concern. It is the intent of the Legislature that this chapter supersede and preempt all enactments and other local action of cities and counties, including charter cities and charter counties, and other local public agencies that conflict with this chapter, other than enactments or local actions that impose additional or more stringent requirements regarding matters set forth in this chapter.

(g) An urban water supplier should take any available necessary step consistent with state law to ensure that the implementation of this chapter does not place an unreasonable burden on low-income families.

*(Added by Stats. 1991, Ch. 407; Amended by Stats. 2004, Ch. 884; Amended by Stats. 2005, Ch. 22.)*

### **Article 3.5 Metered Service**

*(Added by Stats. 2004, Ch. 884)*

**525.** (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 this chapter. 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) Subdivision (a) applies only to potable water.

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

*(Formerly section 110, Added by Stats. 1991, Ch. 407; Amended by Stats. 2004, Ch. 884; Amended by Stats. 2005, Ch. 22.)*

### **Article 4.3 Agricultural and Urban Water Use Reporting**

*(Added by Stats. 2007, Ch. 675.)*

**531.** Unless the context otherwise requires, the definitions set forth in this section govern the construction of this article.

(a) “Aggregated farm-gate delivery data” means information reflecting the total volume of water an agricultural water supplier provides to its customers and is calculated by totaling its deliveries to individual customers.

(b) “Agricultural water supplier” means a supplier either publicly or privately owned, supplying 2,000 acre-feet or more of surface water annually for agricultural purposes or serving 2,000 or more acres of agricultural land. An agricultural water supplier includes a supplier or contractor for water, regardless of the basis of right, which distributes or sells water for ultimate resale to customers.

(c) “Authority” means the California Bay-Delta Authority.

(d) “Best professional practices” means practices attaining and maintaining accuracy of measurement and reporting devices and methods.

(e) “Diversion” has the meaning set forth in subdivision (c) of Section 5100.

(f) “Farm-gate” means the point at which water is delivered from the agricultural water supplier’s distribution system to each of its customers.

(g) “Person” has the meaning set forth in subdivision (d) of Section 5100.

**531.2.** The department, the board, and the State Department of Public Health shall coordinate the collection, management, and use of agricultural and urban water measurement information provided to each agency.

**531.5.** (a) The board, in collaboration with the department, the authority or its successor agency, and the State Department of Public Health, shall prepare and submit a report to the Legislature by January 1, 2009, evaluating the feasibility, estimated costs, and potential means of financing a coordinated water measurement database. The evaluation shall include, but is not necessarily limited to, agricultural and urban water measurement data related to deliveries, diversions, licenses, permits, and other information received by these state agencies that supports effective state and regional water management planning and decisionmaking. The evaluation shall also consider how the database can provide information to address impacts related to climate change mitigation and adaptation.

(b) The report shall consider coordinating the collection and sharing of data through the use of technologies used by the National Environmental Information Exchange Network and the existing data exchange infrastructure of the involved agencies.

(c) It is the intent of the Legislature that the report provide an initial feasibility assessment, and is not intended to serve as the final Feasibility Study Report required by the State Administrative Manual.

**531.10.** (a) An agricultural water supplier shall submit an annual report to the department that summarizes aggregated farm-gate delivery data, on a monthly or bimonthly basis, using best professional practices.

(b) Nothing in this article shall be construed to require the implementation of water measurement programs or practices that are not locally cost effective.

(c) It is the intent of the Legislature that the requirements of this section shall complement and not affect the scope of authority granted to the department or the board by provisions of law other than this article.

**531.15.** Notwithstanding any other provision of the law, state agencies shall carry out the duties described in this article only to the extent that funds are made available for the purposes of implementing those duties.

**531.20.** To the extent that the provisions of this article conflict with the requirements of Chapter 4800 of the State Administrative Manual, the requirements of that chapter shall control.

## **Article 4.5**

### **Irrigated Landscape**

**535.** (a) A water purveyor shall require as a condition of new retail water service on and after January 1, 2008, the installation of separate water meters to measure the volume of water used exclusively for landscape purposes.

(b) Subdivision (a) does not apply to either of the following:

(1) Single-family residential connections.

(2) Connections used to supply water for the commercial production of agricultural crops or livestock.

(c) Subdivision (a) applies only to a service connection for which both of the following apply:

(1) The connection serves property with more than 5,000 square feet of irrigated landscape.

(2) The connection is supplied by a water purveyor that serves 15 or more service connections.

(d) For the purposes of this section, “new retail water service” means the installation of a new water meter where water service has not been previously provided, and does not include applications for new water service submitted before January 1, 2007.

*(Added by Stats. 2006. Ch. 559.)*

## **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.** (Repealed by Stats. 2002, Ch. 652.)

**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.

*(Amended by Stats. 1972, Ch. 274; Amended by Stats. 1976, Ch. 581.)*

**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.

*(Amended by Stats. 1972, Ch. 274.)*

**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.

*(Added by Stats. 1976, Ch. 581; Amended by Stats. 1977, Ch. 12; Amended by Stats. 1981, Ch. 567.)*

**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 as a result of temporary land fallowing or crop rotation, the reduced usage shall be deemed water conservation for purposes of this section. For the purpose of this section, "land fallowing" and "crop rotation" mean those respective land practices, involving the nonuse of water, used in the course of normal and customary agricultural production to maintain or promote the productivity of agricultural land.

(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 subdivi-

sion (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; Stats. 1999, Ch. 938)*

**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 one or more of the water agencies overlying the contemplated points of groundwater extraction and one or more of the water agencies 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.

*(Added by Stats. 1992, Ch. 779; Amended by Stats. 2003, Ch.740.)*

**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.

**1013.** (a) The Imperial Irrigation District, acting under a contract with the United States for diversion and use of Colorado River water or pursuant to the California 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.

(b) For the purposes of this section, and during the term of the Quantification Settlement Agreement as defined in subdivision (a) of Chapter 617 of the Statutes of 2002, "land fallowing conservation measures" means the generation of water to be made available for transfer or for environmental mitigation purposes by fallowing land or removing land from agricultural production regardless of whether the fallowing or removal from agricultural production is temporary or long term, and regardless of whether it occurs in the course of normal and customary agricultural production, if both of the following apply:

(1) The measure is part of a land fallowing conservation plan that includes mitigation provisions adopted by the Board of Directors of the Imperial Irrigation District.

(2) Before the Imperial Irrigation District adopts a land fallowing conservation plan, the district shall consult with the Board of Supervisors of the County of Imperial and obtain the board's assessment of whether the proposed land fallowing conservation plan includes adequate measures to avoid or mitigate unreasonable economic or environmental impacts in the County of Imperial.

(c) In order to minimize impacts on the environment, during the term of the Quantification Settlement Agreement and for six years thereafter, in any evaluation or assessment of the Imperial Irrigation District's use of water, it shall be conclusively presumed that any water conserved, or used for mitigation purposes, through land fallowing conservation measures has been conserved in the same volume as if conserved by efficiency improvements, such as by reducing canal seepage, canal spills, or surface or subsurface runoff from irrigation fields.

(d) If a party to the Quantification Settlement Agreement engages in water efficiency conservation measures or land fallowing conservation measures

to carry out a Quantification Settlement Agreement transfer or to mitigate the environmental impacts of a Quantification Settlement Agreement transfer, there may be no forfeiture, diminution, or impairment of the right of that party to use of the water conserved.

(e) During the period that the Quantification Settlement Agreement is in effect and the Imperial Irrigation District is meeting its water delivery obligations under the Quantification Settlement Agreement, if the Imperial Irrigation District utilizes land fallowing conservation measures that ensure compliance with the criteria of subdivision (c) of Section 2081.7 of the Fish and Game Code for the environmental impacts of a water transfer to implement the Quantification Settlement Agreement, no person or local agency, as defined in Section 21062 of the Public Resources Code, may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily, until the district has adopted a resolution offering to make conserved Colorado River water available.

(f) During the initial term in which the Quantification Settlement Agreement is in effect, any water transferred by the Imperial Irrigation District shall be subject to an ecosystem restoration fee established by the Department of Fish and Game, in consultation with the board, to cover the proportional impacts to the Salton Sea of the additional water transfer. The fee shall not exceed 10 percent of the amount of any compensation received for the transfer of the water. The fee shall be deposited in the Salton Sea Restoration Fund. This fee shall not apply to the following transfers:

(1) Transfers to meet water delivery obligations under the Quantification Settlement Agreement and related agreements, as defined in that agreement.

(2) Transfers to comply with subdivision (c) of Section 2081.7 of the Fish and Game Code.

(3) Transfers pursuant to a Defensive Transfer Agreement as defined in the Agreement for Acquisition of Conserved Water between the Imperial Irrigation District and the Metropolitan Water District of Southern California.

(g) Subdivisions (c), (d), (e), and (f) shall not become operative unless the parties have executed the Quantification Settlement Agreement on or before October 12, 2003.

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

*(Added by Stats. 1987, Ch. 629; Amended by Stats. 2002, Ch. 617; Amended by Stats. 2003, Ch. 612; Amended by Stats. 2005, Ch. 22.)*

**1014.** The transfer of water, or the offer of water for transfer, shall not cause, or be the basis for, a forfeiture, abandonment, or modification of any water right, contract right, or other right to the use of that water. An offer of water for transfer, contract negotiations, or a transfer agreement shall not be used as evidence of waste or unreasonable use, or of cessation of use, of the water made available for transfer.

*(Added by Stats. 1999, Ch. 938)*

**1015.** During the term of a temporary change, as defined in Section 1728, if an enforcement action or other proceeding is commenced that alleges that the use of water violates Section 2 of Article X of the California Constitution, Sections 100, 101, 1410, and 1675, or any other legislative, administrative, or judicial limitation on the water that is subject to that water transfer and the water involved is, at the time of the alleged violation, subject to a water transfer, the determination of the alleged violation shall be based on an assessment of the transferee's use of transferred water. If a transferee's right to use transferred water is divested, in whole or in part, on the basis of the transferee's abandonment, forfeiture, waste, or unreasonable use of the transferred water, the divested portion of the right shall revert immediately to the transferor.

*(Added by Stats. 1999, Ch. 938)*

**1016.** (a) At the conclusion of the term of a water transfer agreement, all rights in, and the use of, the water subject to the agreement revert back to the transferor.

(b) After the conclusion of the term of a water transfer agreement, the transferee or any beneficiary of the transfer shall not do either of the following:

(1) Bring any claim for a continuation of the water supply made available by the agreement.

(2) Claim any right to a continued supply of water as a result of the transfer, based on reliance, estoppel, intervening public use, prescription, water shortage emergency, or unforeseen or unforeseeable increases in demand, or any other cause.

*(Added by Stats. 1999, Ch. 938)*

**1017.** The beneficial use of water pursuant to a transfer or exchange authorized pursuant to Chapter 6.6 (commencing with Section 1435) of, Chapter 10 (commencing with Section 1700) of, Chapter 10.5 (commencing with Section 1725) of, Part 2, or any other provision of law, shall constitute a beneficial use of water by the holder of the permit, license, water right, or other entitlement for use that is the basis for the transfer or exchange, and shall not affect any determination or forfeiture applicable to water appropriated pursuant to the Water Commission Act or this code or water appropriated prior to December 19, 1914.

*(Added by Stats. 1999, Ch. 938)*

## **CHAPTER 1.5.** **WATER LEASES**

**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 appropriate 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 board for approval of the lease agreement and shall include in the application all of the following:

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

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

(3) The application fee set pursuant to Section 1525.

(b) The board, after providing notice and opportunity for a hearing, may approve the lease if, in the judgment of the 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; Amended by Stats. 2003, Ch. 741.)*

**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.)*

**1031.** A water lease pursuant to this chapter shall not take effect until the first annual fee, set pursuant to Section 1525, is paid, and the lease shall not continue in effect in any subsequent year unless the annual fee for that year is paid.

*(Added by Stats. 2003, Ch. 741.)*

## **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.

*(Amended by Stats. 1979, Ch. 373)*

**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 deposited in the Water Rights Fund established pursuant to Section 1550.

(f) The remedies prescribed in this section are cumulative and not alternative.

*(Amended by Stats. 1991, Ch. 1098; Amended by Stats. 2003, Ch. 741.)*

**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 or entity on which administrative civil liability may be imposed pursuant to Section 1052, Article 4 (commencing with Section 1845) of Chapter 12 of Part 2 of Division 2, 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 served that the party may request a hearing not later than 20 days from the date the party was served. The hearing shall be before the board or a member of the board, in accordance with Section 183.

(c) The board, after any necessary hearing, may adopt an order setting administrative civil liability, or determining that a liability shall not be imposed.

(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; Amended by Stats. 2001, Ch. 315; Amended by Stats. 2002, Ch. 652; Amended by Stats. 2010, Ch. 288.)*

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

**1055.2.** A person or entity shall not be subject to both civil liability imposed under Section 1055 and civil liability imposed by the superior court under Section 1052 or Article 4 (commencing with Section 1845) of Chapter 12 of Part 2 of Division 2 for the same act or failure to act.

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*(Amended by Stats. 2001, Ch. 315; Amended by Stats. 2002, Ch. 652; Amended by Stats. 2010, Ch. 288.)*

**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.** (Repealed by Stats. 2004, Ch. 193.)

**1062.** (Repealed by Stats. 2010, Ch. 288.)

### **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 under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

*(Amended by Stats. 1998, Ch. 931; Amended by Stats. 2004, Ch. 182.)*

#### **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 or entity. 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; Amended by Stats. 2001, Ch. 315.)*

**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. Except in cases where the decision or order is issued under authority delegated to an officer or employee of the board, reconsideration before the board is not an administrative remedy that is required to be exhausted before filing a petition for writ of mandate. The time for filing the petition for writ of mandate and the time for filing an action or proceeding in which the board is a respondent under Section 21167 of the Public Resources Code shall be extended for any person who seeks reconsideration by the board pursuant to this article. The amendment of this subdivision made during the 2001 portion of the 2001-02 Regular Session does not constitute a change in, but is declaratory of, existing law.

(c) Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings under this section. 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 is not 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; Amended by Stats. 2001, Ch. 315.)*

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

(b) Subdivision (a) does not apply to changes in the discharge or use of treated wastewater that do not result in decreasing the flow in any portion of a watercourse.

*(Amended by Stats. 2001, Ch. 315.)*

**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 the 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.

(d) This section does not apply to groundwater pumping by the Eastern Water Alliance Joint Powers Agency for export from the Eastern San Joaquin County Basin, as described on pages 38 and 39 of the Department of Water Resources Bulletin No. 118-80, provided that the groundwater pumping is approved by San Joaquin County pursuant to its ordinances regulating the management and export of groundwater as these ordinances are in effect at the time of permit approval by San Joaquin County. Section 10753.1 applies to any groundwater regulation under this section. As used in this section, the term "groundwater" has the same definition as set forth in in [sic] subdivision (a) of Section 10752.

*(Amended by Stats 2003, Ch. 740.)*

**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 Appropriations for Small Domestic, and Livestock Stockpond Uses**

**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 stock watering and irrigation uses, a small irrigation use, and for a livestock stockpond subject to prior rights.

(b) As used in this article:

(1) "Small domestic use" means a domestic use, as that use is defined by board rule, or a use for aesthetic, fire protection, recreational, or fish and wildlife purposes that is associated with a dwelling or other facility for human occupation, that does not exceed direct diversion of 4,500 gallons per day or diversion to storage of 10 acre-feet per annum.

(2) "Small irrigation use" means either of the following:

(A) An irrigation use, heat control use, or frost protection use, not to exceed diversion to storage of 20 acre-feet per annum, including impoundment for incidental aesthetic, fire protection, recreational, or fish and wildlife purposes.

(B) An irrigation use not to exceed direct diversion of 42,000 gallons per day, up to a maximum of 20 acre-feet per annum.

(3) "Livestock stockpond" means a water impoundment structure constructed for livestock watering use not to exceed direct diversion of 4,500 gallons per day, or diversion to storage of 10 acre-feet per year, as that use is defined

by the board, and including impoundment for incidental aesthetic, recreational, or fish and wildlife purposes.

*(Added by Stats 1988, Ch.1040, § 1. Amended by Stats. 2000, Ch.306 § 2; Stats 2011, Ch.579 § 2.)*

**1228.2.** (a) (1) Subject to subdivision (b), any person may obtain a right to appropriate water for a small domestic, small irrigation, or livestock stockpond use upon first registering the use with the board and thereafter applying the water to reasonable and beneficial use with due diligence.

(2) With regard to an appropriation for small domestic use, a registration shall not be filed for a facility served by or used pursuant to a permit or license for domestic or municipal use, and not more than one small domestic use registration shall be in effect at any time for any facility.

(3) With regard to an appropriation for small irrigation use, more than one registration may be in effect at any time for a registrant if the diversion or storage facilities subject to registration for a registrant do not exceed the ratio of one per 20 irrigated acres, and if the total water use on all acreage covered by the registrations, including any water use based on other rights, does not exceed 100 acre-feet per annum.

(4) A small domestic use registration and a small irrigation use registration may be in effect for the same facility only if the total combined water use covered by the registrations does not exceed 20 acre-feet per annum.

(5) With regard to an appropriation for livestock stockpond use, more than one registration may be in effect at any time for a registrant if stockponds subject to registration for that registrant do not exceed the ratio of one per 50 acres.

(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) If a registration is filed with a source of supply on a stream system that the most recent report submitted under subdivision (c) identifies as a stream system that may become fully appropriated within the next reporting period, the registration shall not take effect unless the board finds that unappropriated water is available for the appropriation proposed by the registration. If the board finds that unappropriated water is not available to supply the proposed appropriation, 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).

*(Added by Stats.1988, Ch 1040, § 1. Amended by Stats. 2000, Ch. 306, § 3; Stats. 2011, Ch. 579 § 3.)*

**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 that 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. The certification shall include a copy of any conditions required by the Department of Fish and Game pursuant to this paragraph.

(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 Section 1525 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 list shall set forth a date prior to which any interested person may file a written protest in opposition to the approval of a stockpond registration. That date shall be not later than 30 days from the date on which the list is issued. The board shall mail the monthly list of registrations filed to any person who so requests.

(d) Prior to the date set forth on the list required under subdivision (c), any interested person may file with the board a written protest in opposition to the approval of a stockpond registration. The protest shall clearly set forth the protestant's objections to the registered use based on interference with prior rights. The protest shall be served on the registrant by the protestant by mailing a duplicate copy of the protest to the registrant, or through service undertaken in another manner determined to be adequate by the board. The procedures set forth in Article 1.5 (commencing with Section 1345) of Chapter 5 shall be used for reviewing a protested registration.

*(Added by Stats. 1988, Ch. 1040; Amended by Stats 2000, Ch. 306; Amended by Stats. 2003, Ch.741.)*

**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, small irrigation, or livestock stockpond 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 that are in effect at the time of renewal of registration shall supersede the conditions that 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 Section 1525, shall result by operation of law in the revocation of any right acquired pursuant to this article.

*(Added by Stats. 1988, Ch. 1040; Amended by Stats 2000, Ch. 306; Amended by Stats. 2010, Ch. 288; Amended by Stats. 2011, Ch.579.)*

**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) A 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 Section 1525, except that the purpose of the use shall not be changed and the change shall not operate to the injury of any legal user of the water involved.

(b) A 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 that are in effect at the time of completion of the amended registration shall supersede the conditions that were applicable to the original completed registration.

*(Amended by Stats. 2010, Ch. 288.)*

**1228.8.** (Repealed by Stats. 2003, Ch. 741)

**1228.9.** (Repealed by Stats. 2011, Ch. 579)

**1229.** (a) The board is not required to adopt general conditions for small irrigation use pursuant to subdivision (a) of Section 1228.6 until the board determines that funds are available for that purpose.

(b) A registration for small irrigation use pursuant to this article is not authorized until the board establishes general conditions for small irrigation use pursuant to subdivision (a) of Section 1228.6 to protect instream beneficial uses.

(c) The board may establish general conditions for some methods of diversion or categories of small irrigation use before establishing general conditions for other methods or categories, in which case a registration for small irrigation use is authorized only for those methods or categories for which the board has established the general conditions for the protection of instream beneficial uses.

(d) The board, prior to adopting other general conditions for small irrigation use, and no later than June 30, 2012, shall adopt general conditions for registration of small irrigation use for facilities used for frost protection in the area described in paragraph (1) of subdivision (a) of Section 1259.4, unless the board determines that sufficient funds are not available for that purpose.

*(Added by Stats. 2011 Ch.579.)*

**1229.1.** (a) 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.

(b) Notwithstanding subdivision (a), this article applies to any registration filed before the Director of Fish and Game establishes proposed streamflow

requirements for the source of water supply for the registration. The conditions for renewal under subdivision (c) of Section 1228.5 may include any conditions the Department of Fish and Game determines to be necessary to protect stream-related fish and wildlife resources on any source of water supply for which the Director of Fish and Game has established proposed streamflow requirements pursuant to Section 10002 of the Public Resources Code.

*(Added by Stat.1988, Ch. 1040; Amended by Stats. 2011, Ch. 579.)*

**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.** (a) Except as provided in subdivision (b), nothing in this article applies to interstate lakes, or streams flowing in or out of those lakes.

(b) This article applies to any appropriation or change in point of diversion, place of use, or purpose of use under a right to the use of waters from the Truckee River if the appropriation or change is made pursuant to the operating agreement described in Section 205 (a) of Public Law 101-618.

*(Amended by Stats. 2002, Ch. 7.)*

### **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.** If the person entitled to the use of water fails to use beneficially all or any part of the water claimed by him or her, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, for a period of five years, that unused water may revert to the public and shall, if reverted, be regarded as unappropriated public water. That reversion shall occur upon a finding by the board following notice to the permittee, licensee, or person holding a livestock

stockpond certificate or small domestic use, small irrigation use, or livestock stockpond use registration under this part and a public hearing if requested by the permittee, licensee, certificate holder, or registration holder.

*(Amended by Stats. 2010, Ch. 288; Amended by Stats. 2011, Ch. 579.)*

**1241.5.** (Repealed by Stats. 2010, Ch. 288)

**1241.6.** If 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 five-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.

*(Amended by Stats. 2010, Ch. 288.)*

**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.

**1259.2.** (a) The board shall annually prepare a written summary, in chart form, of pending applications to appropriate water in the Counties of Marin, Napa, Sonoma, Mendocino, and Humboldt. The summary shall include a description of the status of each pending application, the actions taken in the preceding year, proposed actions for the upcoming year, and the proposed date for final action with regard to that application.

(b) For the purposes of carrying out subdivision (a), the board may post the information described in subdivision (a) on its Web site.

*(Added by Stats. 2004, Ch. 943.)*

**1259.4.** (a) (1) On or before January 1, 2008, the board shall adopt principles and guidelines for maintaining instream flows in coastal streams from the Mattole River to San Francisco and in coastal streams entering northern San Pablo Bay, as part of state policy for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7, for the purposes of water right administration.

(2) The board may adopt principles and guidelines for maintaining

instream flows not described in paragraph (1), as part of state policy for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7, for the purposes of water right administration.

(b) Prior to the adoption of principles and guidelines pursuant to subdivision (a), the board may consider the 2002 "Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams" for the purposes of water right administration.

*(Added by Stats. 2004, Ch. 943; Amended by Stats. 2005, Ch.81.)*

## **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.)*

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**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.

*(Added 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.

*(Added 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.

*(Added 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.

*(Added 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**

**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 upon request of the permittee or 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; Amended by Stats. 2010, Ch. 288.)*

**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.

*(Added by Stats. 1971, Ch. 794; 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.

*(Added by Stats. 1971, Ch. 794.)*

**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.

*(Added by Stats. 1973, Ch. 536; Amended by Stats. 1982, Ch. 867.)*

**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.

*(Added by Stats. 1973, Ch. 536; Amended by Stats. 1978, Ch. 563.)*

**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.

*(Added by Stats. 1973, Ch. 536; 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.

*(Amended by Stats. 1977, Ch. 844.)*

**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.

*(Added by Stats. 1977, Ch. 844.)*

## **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.

*(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).

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

**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.

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

**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.

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

**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.

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

**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.

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

**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).

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

## **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.

**1486.** (a) The Sacramento Regional County Sanitation District, and any successor thereto, with respect to treated wastewater produced by the sanitation district that meets the requirements of the California Regional Water Quality Control Board, Central Valley, as may be amended or modified, and that is discharged into the Sacramento River, may file an application for a permit to appropriate an amount of water up to the amount of treated wastewater that is discharged into the Sacramento River, less diminution by seepage, evaporation, transportation, or other natural causes between the point of discharge from the wastewater treatment plant and the point of diversion out of the Sacramento River or the Sacramento-San Joaquin Delta.

(b) Upon application for a permit to appropriate water pursuant to subdivision (a), the board may grant the permit subject to the terms and conditions as

in the board's judgment are necessary for the protection of the rights of any legal user of the water.

(c) Prior to the board granting a permit under subdivision (b), the board shall comply with the provisions of Part 2 (commencing with Section 1200) of Division 2, and other applicable law, and may impose terms and conditions authorized thereunder.

(d) Water appropriated in accordance with this section may be sold or utilized for any beneficial purpose.

*(Added by Stats. 2011, Ch. 212.)*

### **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.

*(Added by Stats. 1982, Ch. 1484.)*

### **CHAPTER 8. FEES**

*(Former Chapter 8, enacted as "Fees" by Stats. 1943, Ch. 368, consisting of §§ 1525 to 1560, was repealed by Stats. 2003, Ch. 741.)*

### **CHAPTER 8. WATER RIGHT FEES** (Added by Stats. 2003, Ch. 741.)

#### **Article 1. Fee Schedules**

**1525.** (a) Each person or entity who holds a permit or license to appropriate water, and each lessor of water leased under Chapter 1.5 (commencing with Section 1020) of Part 1, shall pay an annual fee according to a fee schedule established by the board.

(b) Each person or entity who files any of the following shall pay a fee according to a fee schedule established by the board:

- (1) An application for a permit to appropriate water.
- (2) A registration of appropriation for a small domestic use, small irrigation use, or livestock stockpond use.
- (3) A petition 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.
- (4) A petition to change the point of diversion, place of use, or purpose of use, under a permit, license, or registration.
- (5) A petition to change the conditions of a permit or license, requested by the permittee or licensee, that is not otherwise subject to paragraph (3) or (4).
- (6) A petition to change the point of discharge, place of use, or purpose of use, of treated wastewater, requested pursuant to Section 1211.
- (7) An application for approval of a water lease agreement.
- (8) A request for release from priority pursuant to Section 10504.
- (9) An application for an assignment of a state-filed application pursuant to Section 10504.

(c) The board shall set the fee schedule authorized by this section so that the total amount of fees collected pursuant to this section equals that amount necessary to recover costs incurred in connection with the issuance, administration, review, monitoring, and enforcement of permits, licenses, certificates, and registrations to appropriate water, water leases, and orders approving changes in point of discharge, place of use, or purpose of use of treated wastewater. The board may include, as recoverable costs, but is not limited to including, the costs incurred in reviewing applications, registrations, petitions and requests, prescribing terms of permits, licenses, registrations, and change orders, enforcing and evaluating compliance with permits, licenses, certificates, registrations, change orders, and water leases, inspection, monitoring, planning, modeling, reviewing documents prepared for the purpose of regulating the diversion and use of water, applying and enforcing the prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division, and the administrative costs incurred in connection with carrying out these actions.

(d) (1) The board shall adopt the schedule of fees authorized under this section as emergency regulations in accordance with Section 1530.

(2) For filings subject to subdivision (b), the schedule may provide for a single filing fee or for an initial filing fee followed by an annual fee, as appropriate to the type of filing involved, and may include supplemental fees for filings that have already been made but have not yet been acted upon by the board at the time the schedule of fees takes effect.

(3) The board shall set the amount of total revenue collected each year through the fees authorized by this section at an amount equal to the amounts appropriated by the Legislature for expenditure for support of water rights program activities from the Water Rights Fund established under Section 1550, taking into account the reserves in the Water Rights Fund. The board shall review and revise the fees each fiscal year as necessary to conform with the amounts appropriated. If the board determines that the revenue collected during the preceding year was greater than, or less than, the amounts appropriated, the board may further adjust the annual fees to compensate for the over or under collection of revenue.

(e) Annual fees imposed pursuant to this section for the 2003–04 fiscal year shall be assessed for the entire 2003–04 fiscal year.

*(Added by Stats. 2003, Ch. 741; Amended by Stats. 2011 Ch. 579.)*

**1528.** Each person or entity who files a proof of claim under Article 4 (commencing with Section 2575) of Chapter 3 of Part 3 shall pay a fee according to a fee schedule established by the board. The board shall adopt the schedule of fees pursuant to Section 1530. The board shall establish the fees so as to be sufficient on the average to pay the administrative expenses of the board in processing, reviewing, and preparing a report on the claims submitted to the board.

**1529.** Each person or entity who files a notice pursuant to Part 5 (commencing with Section 4999) shall pay an annual fee according to a fee schedule established by the board. The board shall adopt the schedule of fees pursuant to Section 1530. The board shall set the filing fees in an amount that is sufficient, on the average, to pay the administrative expenses of the board in processing, compiling, and retaining the notices.

**1530.** (a) The board shall adopt, by emergency regulation, the schedules of fees authorized under this article. The emergency regulation may include provisions concerning the administration and collection of the fees. The fee schedules may be graduated in accordance with the number of diversions or the amount of water involved. The board shall periodically adjust the amount of the fees specified in the schedule in accordance with this article.

(b) The emergency regulations adopted pursuant to this section, any amendment thereto, or subsequent adjustments to the regulations, shall be adopted by the board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the board, or any adjustment to an annual fee made by the board pursuant to this section, shall remain in effect until revised by the board.

**1542-1545.** (Repealed by Stats. 1969, Ch. 1087.)

## **Article 2.** **Collection and Enforcement**

**1535.** (a) Any fee subject to this chapter that is required in connection with the filing of an application, registration, request or proof of claim, other than an annual fee required after the period covered by the initial filing fee, shall be paid to the board.

(b) If a fee established under subdivision (b) of Section 1525, Section 1528, or Section 13160.1 is not paid when due, the board may cancel the applica-

tion, registration, petition, request, or claim, or may refer the matter to the State Board of Equalization for collection of the unpaid fee.

**1536.** All annual fees, other than the initial filing fee required in connection with the filing of an application, registration, petition, or request, or proof of claim, and all unpaid fees and expenses referred to the State Board of Equalization for collection pursuant to subdivision (b) of Section 1535 or Section 2868, shall be paid to the State Board of Equalization.

**1537.** (a) The State Board of Equalization shall collect any fee or expense required to be paid to the State Board of Equalization under this chapter.

(b) (1) The State Board of Equalization shall collect the fees pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

(2) Notwithstanding the appeal provisions in the Fee Collection Procedures Law, a determination by the board that a person or entity is required to pay a fee, or a determination by the board regarding the amount of that fee, is subject to review under Chapter 4 (commencing with Section 1120) of Part 1 and is not subject to a petition for redetermination by the State Board of Equalization.

(3) Notwithstanding the refund provisions in the Fee Collection Procedures Law, the State Board of Equalization shall not accept any claim for refund that is based on the assertion that a determination by the board improperly or erroneously calculated the amount of a fee, or incorrectly determined that the person or entity is subject to the fee, unless that determination has been set aside by the board or a court reviewing the determination of the board.

(4) This subdivision shall not be construed to apply Chapter 4 (commencing with Section 1120) of Part 1 to the adoption of regulations under this chapter or to a determination of expenses under Part 3 (commencing with Section 2000).

(c) The board shall provide to the State Board of Equalization the name and address of each person or entity who is liable for a fee or expense, the amount of the fee or expense, and the due date.

**1538.** In any proceeding pursuant to Section 1052 in which it is determined that there has been a violation of the prohibition against the unauthorized diversion or use of water subject to this division, the board or court, as the case may be, may impose an additional liability in the amount of any annual fees that would have been required under this division if the diversion or use had been authorized by a permit or license to appropriate water.

**1539.** If a permit or license holder fails to pay an annual fee imposed pursuant to subdivision (a) of Section 1525 for a period of five years, the board may revoke the permit or license in accordance with the procedures for revocation specified in Section 1241.

**1540.** If the board determines that the person or entity on whom a fee or expense is imposed will not pay the fee or expense based on the fact that the fee payer has sovereign immunity under Section 1560, the board may allocate the fee

or expense, or an appropriate portion of the fee or expense, to persons or entities who have contracts for the delivery of water from the person or entity on whom the fee or expense was initially imposed. The allocation of the fee or expense to these contractors does not affect ownership of any permit, license, or other water right, and does not vest any equitable title in the contractors.

**1541.** This article applies to any fee established or required to be paid under Article 1 (commencing with Section 1525), to any fee or expense set to cover the expenses of the board under Part 3 (commencing with Section 2000), and to any fee set under Section 13160.1 that is required to be deposited in the Water Rights Fund.

### **Article 3. Water Rights Fund**

**1550.** There is in the State Treasury a Water Rights Fund, which is hereby established.

**1551.** All of the following shall be deposited in the Water Rights Fund:

(a) All fees, expenses, and penalties collected by the board or the State Board of Equalization under this chapter and Part 3 (commencing with Section 2000).

(b) All funds collected under Section 1052, 1845, or 5107.

(c) All fees collected under Section 13160.1 in connection with certificates for activities involving hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission.

**1552.** The money in the Water Rights Fund is available for expenditure, upon appropriation by the Legislature, for the following purposes:

(a) For expenditure by the State Board of Equalization in the administration of this chapter and the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code) in connection with any fee or expense subject to this chapter.

(b) For the payment of refunds, pursuant to Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code, of fees or expenses collected pursuant to this chapter.

(c) For expenditure by the board for the purposes of carrying out this division, Division 1 (commencing with Section 100), Part 2 (commencing with Section 10500) of Division 6, and Article 7 (commencing with Section 13550) of Chapter 7 of Division 7.

(d) For expenditures by the board for the purposes of carrying out Sections 13160 and 13160.1 in connection with activities involving hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission.

(e) For expenditures by the board for the purposes of carrying out Sections 13140 and 13170 in connection with plans and policies that address the diversion or use of water.

*(Amended by Stats. 2004, Ch. 183.)*

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**Article 4.**  
**Sovereign Immunity**

**1560.** (a) The fees and expenses established under this chapter and Part 3 (commencing with Section 2000) apply to the United States and to Indian tribes, to the extent authorized under federal or tribal law.

(b) If the United States or an Indian tribe declines to pay a fee or expense, or the board determines that the United States or the Indian tribe is likely to decline to pay a fee or expense, the board may do any of the following:

(1) Initiate appropriate action to collect the fee or expense, including any appropriate enforcement action for failure to pay the fee or expense, if the board determines that federal or tribal law authorizes collection of the fee or expense.

(2) Allocate the fee or expense, or an appropriate portion of the fee or expense, in accordance with Section 1540. The board may make this allocation as part of the emergency regulations adopted pursuant to Section 1530.

(3) Enter into a contractual arrangement that requires the United States or the Indian tribe to reimburse the board, in whole or in part, for the services furnished by the board, either directly or indirectly, in connection with the activity for which the fee or expense is imposed.

(4) Refuse to process any application, registration, petition, request, or proof of claim for which the fee or expense is not paid, if the board determines that refusal would not be inconsistent with federal law or the public interest.

**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.** (a) 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 that useful or beneficial purpose, or that the licensee has failed to observe any of the terms and conditions in the license, the board may revoke the license and declare the water to be subject to appropriation in accordance with this part.

(b) The board may revoke the license upon request of the licensee or after due notice to the licensee and after a hearing, when a hearing is requested by the licensee pursuant to Section 1675.1.

(c) As used in this section "licensee" includes the heirs, successors, or assigns of the licensee.

*(Amended by Stats. 1971, Ch. 794; Amended by Stats. 2010, Ch. 288.)*

**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.

*(Added by Stats. 1971, Ch. 794.)*

**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.

*(Added by Stats. 1971, Ch. 794.)*

**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.

**1701.1.** A petition for change filed after notice of an application shall meet all of the following requirements:

(a) State the name and address of the petitioner.

(b) Be signed by the petitioner, or the petitioner's agent or attorney.

(c) Set forth amendments to the application or an amended application reflecting the proposed change, including any information necessary for the amended application to comply with Section 1260.

(d) Include sufficient information to demonstrate a reasonable likelihood that the proposed change will not injure any other legal user of water.

(e) Contain other appropriate information and be in the form required by applicable regulations.

*(Added by Stats. 2001, Ch. 315.)*

**1701.2.** A petition for change in a permit or license shall meet all of the following requirements:

(a) State the name and address of the petitioner.

(b) Be signed by the petitioner, or the petitioner's agent or attorney.

(c) Include all information reasonably available to the petitioner, 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 change, and a statement of any measures proposed to be taken for the protection of fish and wildlife in connection with the change.

(d) Include sufficient information to demonstrate a reasonable likelihood that the proposed change will not injure any other legal user of water.

(e) Contain other appropriate information and be in the form required by applicable regulations.

*(Added by Stats. 2001, Ch. 315.)*

**1701.3.** (a) After a petition is filed, the board may request additional information reasonably necessary to clarify, amplify, correct, or otherwise supplement the information required to be submitted under this chapter. The board shall provide a reasonable period for submitting the information.

(b) The additional information may include, but need not be limited to, any of the following:

(1) Information needed to demonstrate that the change will not injure any other legal user of water.

(2) Information needed to demonstrate that the change will comply 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.).

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

*(Added by Stats. 2001, Ch. 315; Amended by Stats. 2010, Ch. 288.)*

**1701.4.** If, within the period provided, the petitioner does not provide the information requested pursuant to Section 1701.3, the board shall cancel the petition, unless, for good cause shown, the board allows additional time to submit the requested information.

*(Added by Stats. 2001, Ch. 315.)*

**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.)*

**1703.1.** Any interested person, within the time allowed in the notice of petition, or within the time the board may allow for good cause shown, may file with the board a written protest against approval of the petition.

*(Added by Stats. 2001, Ch. 315.)*

**1703.2.** 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 petition, and state the bases for these objections.
- (d) Contain other appropriate information and be in the form required by applicable regulations.
- (e) Be served on the petitioner by the protestant by mailing a duplicate copy of the protest to the petitioner or through service undertaken in another manner determined to be adequate by the board.

*(Added by Stats. 2001, Ch. 315.)*

**1703.3.** The board may request from the protestant additional information reasonably necessary to clarify, amplify, correct, or otherwise supplement the information required to be submitted pursuant to Section 1703.2. The board shall provide a reasonable period for submitting the information, and may allow additional time for good cause shown.

*(Added by Stats. 2001, Ch. 315.)*

**1703.4.** The protestant and the petitioner shall make a good faith effort to resolve the protest not later than 180 days from the date the period provided pursuant to Section 1703.1 expires. For good cause, the board may allow additional time for the protestant and the petitioner to attempt to resolve the protest.

*(Added by Stats. 2001, Ch. 315.)*

**1703.5.** The board may request from the protestant or the petitioner 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.

*(Added by Stats. 2001, Ch. 315.)*

**1703.6.** (a) The board may cancel a protest or petition for failure to provide information requested by the board under this chapter within the period provided.

(b) Except as provided in subdivisions (c) and (d), the board shall not cancel a protest for failure to submit information not in the possession or under the control of the protestant if the protest meets the requirements of Section 1703.2 and the petitioner is or could be required to submit the information under Section 1701.1, 1701.2, or 1701.3.

(c) If a protest is based on injury to a legal user of water, 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 is a legal user of water.

(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 change will result in injury to the protestant's exercise of its water right or other legal use of water.

(d) If the protest is based on an allegation other than injury to a legal user of water, 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.

(e) If a protest is subject to both subdivisions (c) and (d), the part of the protest subject to subdivision (c) may be canceled pursuant to subdivision (c) and the part of the protest subject to subdivision (d) may be canceled pursuant to subdivision (d).

*(Added by Stats. 2001, Ch. 315; Amended by Stats. 2010, Ch. 288.)*

**1704.** (a) The board, after a hearing, may approve with conditions, or deny, a petition.

(b) Notice of hearing shall be given by mailing the notice not less than 20 days before the date of hearing to the petitioner and to any protestant by registered mail.

(c) (1) The board may, but is not required to, hold a hearing prior to approving an unprotested petition.

(2) The board may, but is not required to, hold a hearing if the board determines that undisputed facts support the approval of the petition and there is no disputed issue of material fact.

(3) The board may, but is not required to, hold a hearing prior to denying a petition, if, after notice, the board determines that the petition is defective, the petition fails to provide information requested by the board, or undisputed facts support the denial of the petition and there is no disputed issue of material fact.

*(Amended by Stats. 2001, Ch. 315.)*

**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) (1) 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.

(2) The petition may be submitted for any of the purposes described in paragraph (1) and may, but is not required to, be submitted in combination with a petition to make any other change authorized pursuant to this part. The petition shall specify the time, location, and scope of the requested change, and other relevant information relating thereto.

(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.

(c) (1) Upon the request of the petitioner, the board may specify, as part of its approval of the petition, that the water that is subject to the approval pursuant to this section shall be in addition to water that is required, if any, to be used for instream purposes to satisfy any applicable federal, state, or local regulatory requirements governing water quantity, water quality, instream flows, fish and wildlife, wetlands, recreation, and other instream beneficial uses. If the request is approved by the board, state and local agencies, as well as the courts, shall not credit the water subject to that petition towards compliance with any of the regulatory requirements described in this subdivision. A federal agency shall comply with the requirement imposed by this paragraph to the extent required by federal law, or to the extent that it chooses to comply.

(2) For the purposes of this subdivision, "requirements" includes requirements or obligations that have not been formally established or allocated at the time of the petition, and obligations under any agreement entered into to meet those requirements. Neither any petition filed pursuant to this section nor any documents or statements made in connection therewith shall be construed or used as an admission, evidence, or indication of any obligation to meet any of the requirements described in this subdivision.

(d) Except as provided in subdivision (c), water that is subject to a petition granted pursuant to this section shall be used to meet, in whole or in part, any requirement described in subdivision (c) if any of these requirements exist. The water shall be credited to the petitioner, or to any other person or entity designated by the petitioner, whenever that person or entity has, or may have, obligations to meet one or more of the requirements described in subdivision (c). The water shall be credited towards compliance with any requirements described in subdivision (c), by state and local agencies, as well as the courts. A federal agency shall comply with the requirement imposed by this subdivision to the extent required by federal law, or to the extent that it chooses to comply.

*(Added by Stats. 1991, Ch. 663; Amended by Stats. 1999, Ch. 938.)*

## **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.** (a) (1) A permittee or licensee who proposes a temporary change shall submit to the board a petition to change the terms of the permit or license as required to accomplish the proposed temporary change. Any petition for a temporary change shall be filed by the permittee or licensee. If the proposed temporary change is for the benefit of a contractor or user supplied directly or indirectly by the permittee or licensee, the permittee or licensee may authorize the contractor or user to participate as a copetitioner. The permittee or licensee shall identify any copetitioner in the petition.

(2) A contractor or user described in paragraph (1), whether or not designated as a copetitioner, and the person to whom the water is proposed to be transferred, shall be named as parties to the proceeding, with the same rights to receive notices, respond to board determinations, and petition for writ of mandate as the petitioner.

(b) A petition shall include both of the following:

(1) Reference to the permit or license that serves as the basis for the water transfer.

(2) A written description of the changes in water storage, timing, and point of diversion, place and purpose of use, timing and point of return flow, and water quality of instream flows that are likely to occur as a result of the proposed temporary change.

(c) A petitioner shall provide a copy of the petition to the Department of Fish and Game, the board of supervisors of the county or counties in which the petitioner currently stores or uses the water subject to the petition, and the board of supervisors of the county or counties to which the water is proposed to be transferred.

(d) Within 10 days of the date of submission of a petition to the board, the petitioner shall publish in not less than one newspaper of general circulation, in the county or counties in which the petitioner currently stores or uses the water subject to the petition, a notice of the petition and a brief description of the terms of the proposed temporary change. The board shall, in a timely manner, provide to the petitioner a list of water right holders of record on file with the board who may be affected by the transfer, and the petitioner shall provide written notice to those water right holders not later than 10 days after the date on which the petition is submitted. The board shall post the notice of petition on its Internet web site not later than 10 days after the date on which the petition is submitted. The notice

of the petition shall specify the date on which comments are due. The board may impose on the petitioner any other notice requirement it determines to be necessary.

(e) Within 10 days of the date of receipt of a petition, the board shall commence an investigation of the proposed temporary change. Pursuant to that investigation, the board shall determine if the water proposed to be transferred would have been consumptively used or stored pursuant to the petitioner's permit or license in the absence of the proposed transfer or conserved pursuant to Section 1011. The board also shall evaluate the changes in water storage, timing and point of diversion, place and purpose of use, timing and point of return flow, water quality, and instream flows, and other changes that are likely to occur as a result of the proposed temporary change.

(f) Water users that may be affected by a proposed temporary change and any other interested party may file a written comment regarding a petition with the board. Comments shall be filed not later than 30 days after the date that the notice was published pursuant to subdivision (d). The board shall evaluate and take into consideration all comments that are filed in a timely manner.

(g) (1) Except as specified in paragraphs (2) and (3), the board shall render a decision on the petition not later than 35 days after the date that investigation commenced or the date that the notice was published, whichever is later. The board's decision shall be in accordance with the substantive standards set forth in Section 1727. The board shall explain its decision in writing and shall send copies of the decision to the petitioner, the Department of Fish and Game, the board of supervisors of the county or counties described in subdivision (c), the proposed transferee, and any party who has filed a written comment in accordance with subdivision (f).

(2) If comments are filed in accordance with subdivision (f), or for any other good cause, the board may extend the date of its decision for up to 20 days.

(3) If the board or the petitioner determines that an additional extension of time for a decision is necessary for the board to make the findings required by Section 1727, or that a hearing is necessary for the board to make those findings, the board may extend the time for a decision with the consent of the petitioner. If the petitioner agrees to a hearing, the board shall identify the issues for which additional evidence is required and shall fix a time and place for the hearing. The board shall provide notice of the time, place, and subject matter of the hearing to the petitioner, the Department of Fish and Game, the board of supervisors of the county or counties described in subdivision (c), the water right holders of record identified pursuant to subdivision (d), the proposed transferee, and any party who has filed a written comment in accordance with subdivision (f).

*(Added by Stats. 1999, Ch. 938.)*

**1727.** (a) The board shall review a petition for a temporary change of water rights in accordance with this section.

(b) The board shall approve a temporary change if it determines that a preponderance of the evidence shows both of the following:

(1) The proposed temporary change would not injure any legal user of the water, during any potential hydrologic condition that the board determines is

likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows.

(2) The proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(c) The petitioner shall have the burden of establishing that a proposed temporary change would comply with paragraphs (1) and (2) of subdivision (b). If the board determines that that petitioner has established a prima facie case, the burden of proof shall shift to any party that has filed a comment pursuant to subdivision (f) of Section 1726 to prove that the proposed temporary change would not comply with paragraphs (1) and (2) of subdivision (b). The board may make a determination required by this subdivision without a hearing.

(d) In reviewing a petition for a temporary change, the board shall not modify any term or condition of the petitioner's permit or license, including those terms that protect other legal users of water, fish, wildlife, and other instream beneficial uses, except as necessary to carry out the temporary change in accordance with this article.

(e) In applying the standards set forth in paragraphs (1) and (2) of subdivision (b), the board shall not deny, or place conditions on, a temporary change to avoid or mitigate impacts that are not caused by the temporary change. Neither the Department of Fish and Game, nor any other state agency that comments on the proposed temporary change, shall propose conditions to mitigate effects on fish, wildlife, or other instream beneficial uses caused by factors other than the proposed temporary change. This subdivision does not limit the board, the Department of Fish and Game, or any other state agency, in proceedings pursuant to any provision of law other than this article.

*(Added by Stats. 1999, Ch. 938.)*

**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. The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out. If, within a period of one year or less, the water involved in the temporary change is moved to off-stream storage outside of the watershed where the water originated, the change shall be considered a temporary change, and the water moved to off-stream storage outside the watershed where the water originated may be put to beneficial use in the place of use and for the purposes of use specified in the board's order approving the temporary change either during or after that period.

*(Added by Stats. 1988, Ch. 1145; Amended by Stats. 1999, Ch. 938.)*

**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 petitioner shall not initiate or increase the use of groundwater to replace surface water transferred pursuant to this article, except in compliance with Sections 1745.10 and 1745.11.

*(Added by Stats. 1999, Ch. 938.)*

## **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.

*(Added by Stats. 1988, Ch. 1145.)*

**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.

*(Added by Stats. 1988, Ch. 1145.)*

**1738-1739.** (Repealed by Stats. 1988, Ch. 1145.)

## **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.

### **Article 3. Enlargement of Existing Works of Another**

**1800.** If it appears to the board that the full capacity of the works built or constructed, or being built or constructed, under an appropriation of water under the Water Commission Act or this code, will not develop the full capacity of the stream at that point, and that the public good requires it, and the board specifically so finds after investigation and hearing of the persons interested, the board may permit any person to repair, improve, add to, supplement, or enlarge, at his own expense, any works already so built or constructed or in process of being so built or constructed under the provisions of this division, and to use the works jointly with the owners thereof.

**1801.** The repairing, improving, adding to, supplementing, or enlarging of works under this article, shall not materially interfere with the proper use thereof by the owner of the works nor materially injure the works.

### **Article 4. Joint Use of Capacity in Water Conveyance Facilities** *(Added by Stats. 1986, Ch. 918.)*

**1810.** Notwithstanding any other provision of law, neither the state, nor any regional or local public agency may deny a bona fide transferor of water the use of a water conveyance facility which has unused capacity, for the period of time for which that capacity is available, if fair compensation is paid for that use, subject to the following:

(a) Any person or public agency that has a long-term water service contract with or the right to receive water from the owner of the conveyance facility shall have the right to use any unused capacity prior to any bona fide transferor.

(b) The commingling of transferred water does not result in a diminution of the beneficial uses or quality of the water in the facility, except that the transferor may, at the transferor's own expense, provide for treatment to prevent the diminution, and the transferred water is substantially the same quality as the water in the facility.

(c) Any person or public agency that has a water service contract with or the right to receive water from the owner of the conveyance facility who has an emergency need may utilize the unused capacity that was made available pursuant to this section for the duration of the emergency.

(d) This use of a water conveyance facility is to be made without injuring any legal user of water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and without unreasonably affecting the overall economy or the environment of the county from which the water is being transferred.

*(Added by Stats. 1986, Ch. 918.)*

**1811.** As used in this article, the following terms shall have the following meanings:

(a) “Bona fide transferor” means a person or public agency as defined in Section 20009 of the Government Code with a contract for sale of water that may be conditioned upon the acquisition of conveyance facility capacity to convey the water that is the subject of the contract.

(b) “Emergency” means a sudden occurrence such as a storm, flood, fire, or an unexpected equipment outage impairing the ability of a person or public agency to make water deliveries.

(c) “Fair compensation” means the reasonable charges incurred by the owner of the conveyance system, including capital, operation, maintenance, and replacement costs, increased costs from any necessitated purchase of supplemental power, and including reasonable credit for any offsetting benefits for the use of the conveyance system.

(d) “Replacement costs” mean the reasonable portion of costs associated with material acquisition for the correction of irreparable wear or other deterioration of conveyance facility parts that have an anticipated life that is less than the conveyance facility repayment period and which costs are attributable to the proposed use.

(e) “Unused capacity” means space that is available within the operational limits of the conveyance system and that the owner is not using during the period for which the transfer is proposed and which space is sufficient to convey the quantity of water proposed to be transferred.

*(Added by Stats. 1986, Ch. 918; Amended by Stats. 1998, Ch. 485.)*

**1812.** The state, regional, or local public agency owning the water conveyance facility shall in a timely manner determine the following:

(a) The amount and availability of unused capacity.

(b) The terms and conditions, including operation and maintenance requirements and scheduling, quality requirements, term or use, priorities, and fair compensation.

*(Added by Stats. 1986, Ch. 918.)*

**1812.5.** (Repealed by Stats. 1997, Ch. 874.)

**1812.6** [(Repealed by Stats. 1999, Ch. 725.), (AB 1584), §1.5, operative January 1, 2001]

**1813.** In making the determinations required by this article, the respective public agency shall act in a reasonable manner consistent with the requirements of law to facilitate the voluntary sale, lease, or exchange of water and shall support its determinations by written findings. In any judicial action challenging any determination made under this article the court shall consider all relevant evidence, and the court shall give due consideration to the purposes and policies of this article. In any such case the court shall sustain the determination of the public agency if it finds that the determination is supported by substantial evidence.

**1814.** This article shall apply to only 70 percent of the unused capacity.

**Note:** Statutes of 1986, Chapter 918 also contains the following provision:

Sec. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

*(Added by Stats. 1986, Ch. 918.)*

## **CHAPTER 12. ENFORCEMENT OF WATER RIGHTS**

### **Article 1. Policy**

**1825.** It is the intent of the Legislature that the state should take vigorous action to enforce the terms and conditions of permits licenses, certifications, and registrations to appropriate water, to enforce state board orders and decisions, and to prevent the unlawful diversion of water.

*(Added by Stats. 1980, Ch. 933; Amended by Stats. 2002, Ch. 652.)*

### **Article 2. Cease and Desist Orders**

**1831.** (a) When the board determines that any person is violating, or threatening to violate, any requirement described in subdivision (d), the board may issue an order to that person to cease and desist from that violation.

(b) The cease and desist order shall require that person to comply forthwith or in accordance with a time schedule set by the board.

(c) The board may issue a cease and desist order only after notice and an opportunity for hearing pursuant to Section 1834.

(d) The board may issue a cease and desist order in response to a violation or threatened violation of any of the following:

(1) The prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division.

(2) Any term or condition of a permit, license, certification, or registration issued under this division.

(3) Any decision or order of the board issued under this part, Section 275, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7,

in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

(e) This article shall not authorize the board to regulate in any manner, the diversion or use of water not otherwise subject to regulation of the board under this part.

*(Amended by Stats. 2002, Ch. 652.)*

**1832.** Cease and desist orders of the board shall be effective upon the issuance thereof. The board may, after notice and opportunity for hearing, upon its own motion or upon receipt of an application from an aggrieved person, modify, revoke, or stay in whole or in part any cease and desist order issued pursuant to this chapter.

*(Amended by Stats. 2002, Ch. 652.)*

**1833.** (Repealed by Stats. 2002, Ch. 652.)

**1834.** (a) In the event that a violation of a requirement described in subdivision (d) of Section 1831 is occurring or threatening to occur, the board shall give notice by personal notice or certified mail, pursuant to which the party shall be informed that he or she may request a hearing not later than 20 days from the date on which the notice is received, to the person allegedly engaged in the violation. The notice shall contain a statement of facts and information that would tend to show the proscribed action, and notification of the requirements of subdivision (b).

(b) Unless a written request for a hearing signed by or on behalf of the notified party is delivered to or received by mail by the board within 20 days after receipt of the notice, the board may adopt a cease and desist order, based on the statement of facts and information set forth in the notice, without a hearing.

*(Amended by Stats. 2002, Ch. 652.)*

**1835.** As used in this chapter, "person" includes any city, county, district, the state, or any department or agency thereof, and the United States to the extent authorized by law.

*(Added by Stats. 1980, Ch. 933.)*

**1836.** Nothing in this chapter shall preclude the board from issuing any order or taking any other action authorized pursuant to Sections 275 and 1052.

*(Added by Stats. 1980, Ch. 933.)*

### **Article 3. Judicial Review**

**1840.** (Repealed by Stats. 1996, Ch. 659)

### **Article 4. Enforcement**

**1845.** (a) Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.

(b) (1) Any person or entity who violates a cease and desist order issued pursuant to this chapter may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.

(3) Civil liability may be imposed administratively by the board pursuant to Section 1055.

(c) In determining the appropriate amount, the court, or the board, as the case may be, 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.

(d) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

*(Amended by Stats. 1987, Ch. 760; Amended by Stats. 1996, Ch. 659; Amended by Stats. 2002, Ch. 652; Amended by Stats. 2003, Ch. 741.)*

## **Article 5. Private Litigation**

**1850.** Any factual or legal determinations made pursuant to a cease and desist order shall be conclusive and shall preclude any party to the order from raising those issues in any subsequent administrative proceeding.

*(Added by Stats. 1980, Ch. 933; Amended by Stats. 2002, Ch. 652.)*

**1851.** Nothing in this chapter shall be construed to limit or abridge the right of any person to bring an action for equitable or legal relief for harm caused by an unauthorized diversion or a violation of a term or condition of a permit or license. No such person shall be required to exhaust any administrative remedy provided by this chapter before bringing such an action.

*(Added by Stats. 1980, Ch. 933.)*

## **PART 3. DETERMINATION OF WATER RIGHTS**

### **CHAPTER 1. REFERENCE BY COURTS OF THIS STATE**

#### **Article 1. Subjects of Reference**

**2000.** In any suit brought in any court of competent jurisdiction in this State for determination of rights to water, the court may order a reference to the board, as referee, of any or all issues involved in the suit.

**2001.** In any suit brought in any court of competent jurisdiction in this State for determination of rights to water, the court may refer the suit to the board for investigation of and report upon any or all of the physical facts involved.

## **Article 2. Report of Referee**

**2010.** The board may base its report solely upon its own investigations or in addition thereto may hold hearings and take testimony.

**2011.** The report of the board as referee may contain such opinion upon the law and the facts as it deems proper in view of the issues submitted.

**2012.** The report shall set forth such findings of fact and conclusions of law as may be required by the court's order of reference.

**2013.** Before filing its report the board shall announce it in the form of a draft.

**2014.** The board shall mail notice of the draft, together with a copy of the draft, to the parties or their attorneys.

**2015.** Within 30 days after the date of the mailing of the draft, or within such further time as the court may for good cause allow, any party may file objections to it with the board.

**2016.** After the objections have been considered by the board or a hearing has been held thereon if deemed advisable by it, the board shall file its report as referee with the clerk of the court and give notice by mail of the filing of its report to the parties or their attorneys.

**2017.** The report of the board as referee is subject to review by the court upon exceptions thereto filed with the clerk of the court within 30 days after date of mailing notice of the filing of the report.

**2018.** No exception to the report shall be considered, except in the court's discretion or for good cause shown, unless it appears that the matter of the exception was presented to the board in the form of an objection.

**2019.** The report filed by the board is prima facie evidence of the physical facts therein found; but the court shall hear such evidence as may be offered by any party to rebut the report or the prima facie evidence.

**2020.** (a) At any time after filing of the report by the board as provided in Section 2016 the board, if it appears that underground water is being pumped in an

amount which, if not restricted, would destroy or irreparably injure the waters of the basin due to ocean water intrusion before final judgment can be had, may, on notice, pursuant to the provisions of Section 527 of the Code of Civil Procedure, apply to the courts for a preliminary injunction, restricting the pumping of water of the basin so as to avoid irreparable injury to, or destruction of, the waters of the basin, and the court may issue the injunction, subject to the provisions of Section 2021, equitably restricting and apportioning the reduction in the pumping of water.

(b) The provisions of this section apply only to actions to determine rights to waters of underground basins located in the arid, southern coastal area defined by the exterior boundaries of the Counties of Santa Barbara, Ventura, Los Angeles, Orange, and San Diego.

*(Added by Stats. 1953, Ch. 1690; Amended by Stats. 1982, Ch. 517.)*

**2021.** Where a preliminary injunction has been granted pursuant to Section 2020, the final judgment shall equitably compensate in quantities of water for such variations as there may be between the rights of the parties to the use of water on which such preliminary injunction is based, and as such rights are determined in such final judgment.

*(Added by Stats. 1953, Ch. 1690.)*

### **Article 3. Expenses of Reference**

**2040.** In acting pursuant to this chapter the board shall not be entitled to any fee for its services but shall be paid or reimbursed the total expense incurred by it, including salaries, wages, traveling expenses, and all costs of whatsoever character which are properly chargeable to the reference.

**2041.** If the funds available for the use by the board are inadequate to permit it to advance the expense of a reference, or if in its opinion the payment of the expense of any reference is not reasonably certain, the board shall refuse to undertake a reference unless and until adequate provision is made by the parties and approved by the court for the payment of the expenses.

**2042.** During the pendency of any reference, upon motion of the board and upon a hearing by the court after at least 10 days' notice to the parties, the court may order such interim or partial payments of the expense to be made by the parties as it deems proper and equitable under the circumstances.

**2043.** The total expense shall be equitably apportioned by the board against the parties to the suit, and a statement thereof and of the apportionment shall be sent by registered mail by the board to the parties and filed with the court.

**2044.** (Repealed by Stats. 1963, Ch. 329.)

**2045.** Upon application in writing by any party aggrieved within 30 days after the statement of final expense and its apportionment has been mailed to the parties,

the court shall after expiration of that period set a hearing for the determination of any objections to the expense of the reference or to the apportionment thereof. The clerk of the court shall, at least 10 days prior to the date of hearing, give notice thereof by mail to all parties.

**2046.** Any party failing to object to the expense of a reference or the apportionment thereof is conclusively deemed to have waived all objection thereto.

**2047.** If no objection is filed with the court within the prescribed period, the court upon ex parte application of the board shall enter a judgment against the parties in favor of the board in the amounts apportioned to them.

**2048.** Upon the hearing of objections to the expense or the apportionment thereof the court shall determine the expense and its apportionment as the court deems equitable and shall enter judgment against the parties in favor of the board in the amounts apportioned to them.

**2049-2050.** (Repealed by Stats. 1963, Ch. 329.)

## **CHAPTER 2. REFERENCES IN FEDERAL COURTS**

**2075.** In case suit is brought in a federal court for determination of rights to water within, or partially within, this State, the board may accept a reference of such suit as master or referee for the court.

**2076.** In acting under this chapter the board shall proceed according to the rules of practice and procedure of the court or as otherwise directed by the court.

## **CHAPTER 2.5. ADJUDICATIONS TO PROTECT THE QUALITY OF GROUND WATER**

**2100.** After the department has submitted to the board recommendations for the protection of the quality of ground water pursuant to Section 12617.1 or 12923.1 of this code, or in reliance upon investigation by any governmental agency, the board may file an action in the superior court to restrict pumping, or to impose physical solutions, or both, to the extent necessary to prevent destruction of or irreparable injury to the quality of such water. In such action, all of the claimants to the use of the affected water known to the board, except claimants to the use of minor quantities of water as defined in Section 2102, shall be named as defendants. In any watershed or ground water basin wherein (a) all or substantially all of the rights to water have been adjudicated and the court has retained continuing jurisdiction arising from the adjudication, or (b) wherein such action is pending, any such proceedings by the board shall be undertaken only by intervention by the board in such existing action.

**2101.** (a) Before filing or intervening in any such action the board shall hold a public hearing on the necessity for restricting ground water pumping or for a physical solution in order to protect the quality of water from destruction or irreparable injury. The board shall serve notice of such hearing as provided in Section 6066 of the Government Code and shall mail a copy of such notice to each producer of ground water within the area proposed for investigation, to the extent that such producers of ground water are known to the board, at least 15 days prior to the date of such hearing, except that notice need not be mailed to producers of minor quantities of water as defined in Section 2102.

(b) In the event the board decides that the rights to the use of the ground water must be adjudicated in order to require the restriction of pumping or physical solution necessary to preserve it from destruction or irreparable injury to quality, the board shall first determine whether any local public agency overlying all or a part of the ground water basin will undertake such adjudication of water rights. If such local agency commences an adjudication, the board shall take no further action, except that the board may, through the Attorney General, become a party to such action.

(c) In the event no local agency commences such action within 90 days after notice of the decision of the board, the board shall file such action.

*(Added by Stats. 1969, Ch. 482.)*

**2102.** As used in this article, "minor quantities of water" refers to the extraction by any person of not to exceed 10 acre-feet of ground water annually.

*(Added by Stats. 1969, Ch. 482.)*

### CHAPTER 3. STATUTORY ADJUDICATIONS

#### Article 1. General Provisions

**2500.** As used in this chapter, "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 flowing through known and definite channels.

**2500.5.** (a) As used in this chapter with respect to the Scott River in Siskiyou County, "stream system" includes ground water supplies which are interconnected with the Scott River, but does not include any other underground water supply.

(b) The Legislature finds and declares that by reason of the geology and hydrology of the Scott River, it is necessary to include interconnected ground waters in any determination of the rights to the water of the Scott River as a foundation for a fair and effective judgment of such rights, and that it is necessary that the provisions of this section apply to the Scott River only.

(c) If this section is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter, or

of any proceedings thereunder, but shall affect only the validity of the proceedings with respect to such interconnected ground water supplies.

*(Added by Stats. 1971, Ch. 794.)*

**2501.** The board may determine, in the proceedings provided for in this chapter, all rights to water of a stream system whether based upon appropriation, riparian right, or other basis of right.

**2502.** If the board finds that the use by any persons under claim of right of only minor quantities of water, as defined in Section 2503, would have no material effect on the rights of other claimants, the board may exempt such persons from being subject to these proceedings as claimants or parties with respect to such minor quantities of water; provided, that any person so exempted may elect to continue to be subject to these proceedings by giving prompt notice to the board.

*(Added by Stats. 1971, Ch. 794.)*

**2503.** As used in this chapter, "minor quantities of water" refers to the diversion or extraction by any person of not to exceed 10 acre-feet of water annually.

*(Added by Stats. 1971, Ch. 794.)*

## **Article 2. Petition and Preliminary Proceedings**

**2525.** Upon petition signed by one or more claimants to water of any stream system, requesting the determination of the rights of the various claimants to the water of that stream system, the board shall, if, upon investigation, it finds the facts and conditions are such that the public interest and necessity will be served by a determination of the water rights involved, enter an order granting the petition and make proper arrangements to proceed with the determination.

**2526.** As soon as practicable after granting the petition the board shall prepare and issue a notice setting forth the following:

(a) The facts of the entry of the order and of the pendency of the proceedings;

(b) That all claimants to rights to the use of water of the stream system are required to inform the board within 60 days from the date of the notice, or such further time as the board may allow, of their intention to file proof of claim;

(c) The date prior to which all claimants to rights to the water of the stream system shall notify the board in writing of their intention to file proof of claim and the address to which all subsequent notices to the claimant relating to the proceedings may be sent;

(d) A statement that all claimants will be required to make proof of their claims at a time to be fixed by the board after the conclusion of its investigation.

*(Amended by Stats. 1976, Ch. 545.)*

**2527.** The notice shall be published at least once a week for four consecutive weeks, commencing within 20 days of the date of issuance of the notice, in one

or more newspapers of general circulation published in each county in which any part of the stream system is situated, and, within the same 20-day period, the notice shall be mailed to all persons known to the board who own land that appears to be riparian to the stream system or who divert water from the stream system.

*(Amended by Stats. 1976, Ch. 545.)*

**2528.** Whenever proceedings are instituted for the determination of rights to water, it is the duty of all claimants interested therein and having notice thereof as provided in this chapter, to notify the board of their intention to file proof of claim and to appear and submit proof of their respective claims at the time and in the manner required by this chapter.

**2529.** (a) Within 60 days after the date by which claimants to rights to the water of the stream system are required to notify the board in writing of their intention to file proof of claim, the board shall prepare and file for record, in the office of the county recorder of each county in which any part of the stream system is situated, a notice setting forth all of the following facts:

(1) The order has been entered and the proceedings are pending.

(2) Information regarding the status of the proceedings may be obtained from the board.

(3) The proceedings will result in a determination of the rights to water of the stream system.

(4) Any claimant who fails to appear and submit proof of his or her claim as provided in this chapter shall be held to have forfeited all rights to water previously claimed by him or her on the stream system, other than as provided in the decree, unless entitled to relief under the laws of this state.

(5) At the conclusion of the proceedings, the superior court will enter a decree determining the water rights appurtenant to each parcel identified in the notice, including the specific parcel against which this notice appears, and the decree may accord the claimant for that parcel water rights which are different from those he or she has claimed.

(b) The notice shall identify the current owners of each parcel that appears to be riparian to the stream system or to which water is diverted from the stream, and shall be recorded in a manner so that anyone researching the title of a parcel will find the notice.

(c) If the board subsequently identifies an additional parcel or parcels which appear to be riparian to the stream system or to which water is diverted from the stream, the board shall prepare and file for record a supplementary notice identifying the current owners of the additional parcels. The supplementary notice shall be recorded in the same manner as the original notice.

*(Added by Stats. 1984, Ch. 1654.)*

### **Article 3. Investigation of Stream System**

*(Added by Stats. 1976, Ch. 545.)*

**2550.** As soon as practicable after granting the petition, the board shall begin

an investigation of the stream system, of the diversion of water, of all beneficial uses being made of the water, and of the water supply available for those uses, and shall gather such other data and information as may be essential to the proper determination of the water rights in the stream system.

**2551.** During the investigation the representatives of the board shall, after 30 days' notice in writing to each person who has given notice of intent to file proof of claim, conduct a detailed field investigation of such person's use of water, and shall determine the acreage under irrigation or otherwise define the place of use and purpose of use, determine the location and capacity of such person's diversion works and conduits conveying water from the stream system, and the amount of water diverted and reasonably required to satisfy the uses being made. It shall be the duty of each claimant to be present at some time during the detailed field investigation either in person or by an agent who is authorized to sign the proof of claim.

**2552.** Each claimant shall have available at the detailed field investigation all pertinent information on the extent and nature of the claimant's water use and basis of water right, so as to expedite the investigation and facilitate the completion of the proof of claim.

**2553.** Immediately upon conclusion of the detailed field investigation, the claimant or the claimant's representative shall be provided, by registered mail, a blank form of proof of claim and a copy of the factual determinations of the representatives of the board for use in preparing the proof of claim.

**2554.** During the investigation of the stream system, the board shall also conduct detailed field investigations of projects of all water users known to the board who have not filed a notice of intent to file proof of claim. Such investigations shall be in accordance with Section 2551, except that the water users need not be notified in advance of the investigation.

**2555.** Water users not present during conduct of the detailed field investigation and those not filing notice of intent shall, insofar as they are known, be supplied a copy of the factual determinations of the representative of the board and a blank form of proof of claim and shall be allowed to file proof of claim after completion of the detailed investigation of their project by the representatives of the board on the same basis as persons who were present and who filed timely notices of intent.

#### **Article 4.**

#### **Proof of Claim**

*(Added by Stats. 1976, Ch. 545.)*

**2575.** The proof of claim shall be filed with the board on the form provided by the board and shall include all of the following:

- (a) The name and post office address of the claimant.

(b) The nature of the right on which the claim is based, the date upon which it was initiated, and the purpose of use.

(c) A description of any works of diversion or distribution and the date such works were constructed.

(d) The character of the soil and the location, area, and kind of crops irrigated, if any; the season of use; and the amount of water required and diverted.

(e) The number of people served water, if any.

(f) Such other facts as the board requires to show the extent and nature of the right and compliance with the law in acquiring it.

**2576.** Each claimant shall certify to the proof of claim statements under oath or penalty of perjury.

**2577.** Any person not submitting a proof of claim to the board or to representatives of the board by the conclusion of the investigation shall be notified in writing that such person's rights will be entered in the preliminary order of determination by the board based on the measurements and information gathered during the investigation unless a claim is submitted within 30 days of such notification.

**2578.** (Repealed by Stats. 1965, Ch. 53.)

#### **Article 5.**

#### **Report and Preliminary Order of Determination**

*(Added by Stats. 1976, Ch. 545.)*

**2600.** After all field investigations have been completed and the time for filing proofs of claims has expired, the board shall prepare a report describing the water supply and abstracting the claim of water right of each claimant.

**2601.** The report shall note separately any material differences between the claims and the factual determinations made by the representatives of the board during the investigation.

**2602.** The report shall include a map showing the stream system, diversion points, conduits, areas of water use and the type of use, owner's names, and such other information as the board deems necessary.

**2603.** The report shall include a preliminary order of determination determining and establishing the several rights to the water of the stream system, giving appropriate consideration to claims at variance with the measurements and determinations of the representatives of the board.

**2604.** A copy of the report shall be sent by registered mail to each claimant and to each person not filing a claim appearing in the report as a water user. It shall be accompanied by a notice setting a day at least 60 days thereafter, prior to which such persons may file objections to any portion of the report, including the preliminary order of determination.

**Article 6.**  
**Objections to the Report**  
*(Added by Stats. 1976, Ch. 545.)*

**2625.** The notice shall also set a time and place reasonably convenient to the claimants when and where the proofs of claim and measurements and other data collected by the board during the proceedings will be open and available for inspection by all interested persons. The period of inspection shall be fixed by the board but shall be not less than five days.

**2626.** A representative of the board shall be present at the time and place designated in the notice, and shall permit, during the period of inspection, any person interested to inspect such evidence and proofs of claim as have been filed.

**2627.** The period of inspection shall be concluded at least 30 days prior to the expiration of the time allowed claimants for filing objections to the report and preliminary order of determination.

**2628.** The objections shall be in writing and shall state with reasonable certainty the grounds of the objection.

**2629.** (Repealed by Stats. 1976, Ch. 545.)

**Article 7.**  
**Hearing of Objections**  
*(Added by Stats. 1976, Ch. 545.)*

**2650.** Within 10 days after the close of the period for filing objections, the board shall mail copies of the objections to the claimant or water user against whom the objections are directed and shall notify by registered mail the persons whose rights are significantly affected to appear before it at a time and place specified and at such time and place the objections will be heard. The time specified shall be as soon as practicable but not less than 15 days from the date of the mailing of the notice of hearing.

**2651.** The board may adjourn hearings of objections from time to time upon reasonable notice to all parties in interest.

**2652.** The costs of taking testimony at a hearing on an objection shall be borne by the parties thereto as follows: each party shall pay for the direct examination of his own witness and the cross-examination of opponent's witness, and the parties shall share equally for that part of the examination directed by the representative of the board.

**2653.** One copy of the transcript of testimony taken at the hearing shall be furnished to the board at the cost of the parties.

**2654-2659.** (Repealed by Stats. 1976, Ch. 545.)

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**Article 8.**  
**Order of Determination**

**2700.** As soon as practicable after the hearing of objections or the expiration of the time for filing objections if no objections are filed, the board shall adopt an order determining and establishing the several rights to the water of the stream system.

*(Amended by Stats. 1984, Ch. 1654.)*

**2701.** A notice of adoption of the order of determination and a copy of the order shall be sent by registered mail to each claimant and to each person whose rights are determined in the order.

*(Amended by Stats. 1984, Ch. 1654.)*

**2702.** (a) The board may order a reconsideration of all or part of an order of determination on the board's own motion or on petition of any party affected by the order. The petition shall be filed within 30 days after the notice required by Section 2701 is sent. The authority of the board to order a reconsideration on its own motion shall expire 30 days after the board has adopted the order. The board shall order or deny reconsideration on a petition for reconsideration within 90 days after the notice required by Section 2701 is sent.

(b) The order of determination may be reconsidered by the board on all the pertinent parts of the record and any arguments as may be permitted, or a further hearing may be held, upon notice to all affected parties, for the purpose of receiving additional evidence that the board may, for cause, allow. The order on reconsideration has the same force and effect as an original order.

*(Added by Stats. 1984, Ch. 1654; Amended by Stats. 1990, Ch. 230.)*

**2703.** (Renumbered Section 2701 and Amended by Stats. 1976, Ch. 545.)

**Article 9.**  
**Hearing and Decree of Court**

**2725-2728.** (Repealed by Stats. 1965, Ch. 53.)

**2750.** As soon as practicable after adoption of the order of determination, issuance of an order on reconsideration, or issuance of an order denying reconsideration, whichever is later, a certified copy of the order, together with the original evidence and transcript of testimony filed with or taken before the board and certified by it, shall be filed with the clerk of the superior court of the county in which the stream system, or some part thereof, is situated.

*(Amended by Stats. 1984, Ch. 1654.)*

**2751.** Upon the filing of the certified copy of the order of determination and the evidence and transcript, the board shall procure an order from the court setting a time for hearing.

**2752.** The clerk of the court shall immediately furnish the board with a certified copy of the order setting the time for hearing.

**2753.** Upon receiving the certified copy of the order setting the time for hearing, the board shall immediately mail a copy of the order by registered mail to each known party in interest at his last known place of residence.

**2754.** The board shall cause the order to be published at least once a week for four consecutive weeks in some newspaper of general circulation published in each county in which the stream system or any part thereof is situated.

**2755.** The board shall file with the clerk of the court proof of service by registered mail and by publication.

**2756.** Service by registered mail and by publication shall be deemed full and sufficient notice to all parties in interest of the date and purpose of the hearing.

**2757.** At least 10 days prior to the day set for hearing, each party in interest who is aggrieved or dissatisfied with the order of determination may file with the clerk of the court notice of exceptions to the order of determination.

**2758.** The notice of exceptions shall state briefly the exceptions taken, the reasons therefor, and the prayer for relief.

**2759.** A copy of each notice of exception shall be sent by registered mail at least 10 days prior to the hearing to the board and to each person who was an adverse party to any issue raised by the exception at a hearing of the board.  
*(Amended by Stats. 1976, Ch. 545.)*

**2760.** The order of determination, the statements or claims of claimants, and the exceptions made to the order of determination constitute the pleadings.

**2761.** The court may allow such additional or amended pleadings as may be necessary to a final determination of the proceeding.

**2762.** If no exceptions are filed, then on the day set for the hearing, on motion of the board, the court shall enter a decree affirming the order of determination.

**2763.** On the day set for hearing all parties in interest who have filed notices of exceptions shall appear in person, or by counsel, and the court shall hear the matter or set the time for hearing, and shall continue the hearing until all exceptions are disposed of.

**2763.5.** (a) No exception to the order of determination shall be considered, except in the court's discretion for good cause shown, unless the matter of the exception was presented to the board in the form of an objection. Good cause includes, but is not limited to, the existence of newly discovered relevant evidence which, in the exercise of reasonable diligence, could not have been presented to the board during the board's proceedings.

(b) This section does not apply to persons to whom the board did not mail either (1) written notice of the board meeting at which the petition pursuant to Section 2525 is to be considered as an item of business, or (2) written notice of the pendency of the proceedings pursuant to Section 2526.

*(Added by Stats. 1985, Ch. 572.)*

**2764.** All proceedings on the hearing shall be as nearly as may be in accordance with the rules governing civil actions.

**2765.** Whenever in the judgment of the court the State is a necessary party to the action, the court shall make an order to that effect and thereupon a copy of all pleadings and proceedings on file with the court in the action shall be served upon the Attorney General who shall represent the State therein.

**2766.** For further information on any subject in controversy the court may employ one or more qualified persons to investigate and report thereon under oath, subject to examination by any party in interest as to his competency to give expert testimony on the subject.

**2767.** The court may take additional evidence on any issue and may, if necessary, refer the case for such further evidence to be taken by the board as the court may direct, and may require a further determination by the board.

**2768.** After the hearing, the court shall enter a decree determining the right of all persons involved in the proceeding.

**2769.** The decree shall in every case declare as to the water right adjudged to each party, the priority, amount, season of use, purpose of use, point of diversion, and place of use of the water; and as to water used for irrigation, the decree shall also declare the specific tracts of land to which it is appurtenant, together with such other factors as may be necessary to define the right.

**2770.** Upon the hearing the court may assess and adjudge against any party such costs as it may deem just.

**2771.** Appeals from the decree may be taken by the board or any party in interest, in the same manner and with the same effect as in civil cases.

**2772.** A certified copy of the decree shall be prepared by the clerk of the court, without charge, and filed for record in the office of the county recorder of each county in which any part of the stream system is situated and also in the office of the board.

**2773.** The decree is conclusive as to the rights of all existing claimants upon the stream system lawfully embraced in the determination.

**2774.** When a decree has been entered, any claimant who has failed to appear and submit proof of his claim as provided in this chapter shall be barred and es-

topped from subsequently asserting any rights theretofore acquired upon the stream system embraced in the proceedings, and shall be held to have forfeited all rights to water theretofore claimed by him on the stream system, other than as provided in the decree, unless entitled to relief under the laws of this State.

### **Article 10. Intervention**

**2780.** Any claimant who, prior to entry of the order of determination by the board, had no actual knowledge or notice of the pendency of the proceedings may, at least 10 days prior to the date set for hearing by the court or within such further time prior to the decree as the court may allow, intervene in the proceedings by filing with the court an exception to the order of determination and a proof of claim which shall contain all the matters required by this chapter of claimants who have been served with notice of the proceeding.

**2781.** Upon filing his exception and proof of claim, the intervenor shall make application to the court for an order prescribing the time and manner of service of the exception and proof upon other claimants and the time within which contests of the proof may be filed with the court and served upon the intervenor.

**2782.** After expiration of the time fixed by the court for filing contests, the court shall proceed to hear and determine the exception and proof of intervenor and any contest thereto in accordance as near as may be with Article 9 (commencing with Section 2750).

*(Amended by Stats. 1983, Ch. 142.)*

**2783.** The court may refer the matter for such further evidence to be taken by the board as the court may direct, and may require a further determination by the board, in which event the board shall be entitled to reimbursement for expenses incurred by it in the manner provided in Article 13 (commencing with Section 2850) of this chapter.

### **Article 11. Proceedings When Appropriation Incomplete at Time of Determination**

**2800.** (Repealed by Stats. 1965, Ch. 53.)

**2801.** All persons claiming rights under an incomplete appropriation, when notified as provided in this chapter, shall appear and submit their proofs of claim in accordance with this chapter, or they shall be deemed and held to be in default and to have abandoned or to have no right, title, or interest in or to the water of the stream system, other than as the person may be found to be entitled by the board based on available information and data.

**2802.** In determining rights based on an incomplete appropriation initiated according to law prior to December 19, 1914, and since prosecuted with reasonable diligence in accordance with Section 1416 of the Civil Code, the board shall

prescribe such reasonable time for the completion of the appropriation and the application of the water to a beneficial use as will enable the claimant acting in good faith and with due diligence to complete the appropriation.

**2803.** The order of determination shall provide that within the time prescribed for completion of the appropriation, or such further time as the court may allow, the claimant shall submit to the court proof of completion and the amount of water actually applied to beneficial use.

**2804-2805.**(Repealed by Stats. 1965, Ch. 53.)

**2806.** The court shall have authority to thereafter hear and determine proof offered as to the completion of any such right.

**2807.** Time for completion may be extended from time to time by the court upon motion made prior to the expiration of the limit of time fixed therefor.

**2808.** Notice of motion for an extension of time for completion shall be filed not more than 90 days prior to the expiration of the time limit.

**2809.** The clerk of the court shall post notice of hearing of the motion at the courthouse where the hearing is to be held and at least 10 days prior to the hearing.

**2810.** The court may refer the matter of the motion to the board for its report and recommendation thereon.

**2811.** Upon receipt of the report and recommendation of the board or, if the board fails to file its report and recommendations within 90 days after the reference, upon the expiration of that period, the court shall grant such an extension of time as there is, in its discretion, good and sufficient cause for, or shall deny the motion.

**2812.** In event of denial of a motion for the extension of time for completion the applicant may within 10 days after notice by the clerk of the denial, file notice of intention to offer proof of completion.

**2813.** Any claimant desiring to offer proof of completion shall file a notice of intention to offer such proof with the clerk of the court.

**2814.** The clerk shall post notice of the time for hearing the proof at the courthouse where the hearing is to be held and at least 10 days prior to the hearing.

**2815.** Upon submission of proof of completion after entry of the decree of the court, the court shall enter a supplemental decree determining the right before it and in event of failure, after entry of the decree of the court, to submit proof within the time allowed or to move for and secure an extension of time to do so the court shall enter a supplemental decree denying the right involved.

**2816.** All persons claiming rights under incomplete appropriations who fail to complete their appropriations within the limit of time fixed by the board in its order of determination, or within such further time granted upon motion made prior to the expiration of the time limit as the court finds equitable and just, shall be deemed to have abandoned their rights of appropriation insofar as the same remain incomplete, and such appropriators shall be deemed and held to have no right, title or interest in or to the water of the stream system insofar as their appropriations have not been completed.

**2817.** Appeals from any action of the court under this article may be taken by the board or any party in interest in the same manner and with the same effect as in civil cases.

**2818.** This article shall not be construed to confer any rights of appropriation upon parties who shall have abandoned their appropriations or failed to use due diligence in the application of the water to a beneficial use and in the completion of their appropriations.

**2819.** Incomplete appropriations initiated by application under the provisions of the Water Commission Act or this code shall be included in the decree but shall continue to be administered by the board as in other cases. Upon issuance of a license by the board and completion of court review of the board's action under Article 3 (commencing with Section 1126) of Chapter 4 of Part 1, if court review is sought, and upon motion of the licensee or the board, the court shall enter a supplemental decree confirming the right in accordance with the license. Any change authorized by the board pursuant to Chapter 10 (commencing with Section 1700), Part 2, of this division, shall in like manner be the subject of a supplemental decree.

*(Amended by Stats. 1996, Ch. 659.)*

**2820.** After revocation by the board of a permit or license relating to a right included in the decree and upon completion of court review of the board's action under Article 3 (commencing with Section 1126) of Chapter 4 of Part 1, if court review is sought, the court shall, upon motion of the board or any interested party, enter a supplemental decree denying the right involved.

*(Amended by Stats. 1996, Ch. 659.)*

## **Article 12.** **Service of Copy of Decree**

**2825.** The board shall furnish to each claimant whose rights are decreed a copy of the decree and a notice of the entry thereof.

**2826.** Upon entry of a supplemental decree establishing or modifying a right, the board shall furnish to each claimant who could be significantly affected, at his last known address, a copy of the supplemental decree and a notice of entry thereof.

*(Amended by Stats. 1976, Ch. 545.)*

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**Article 13.**  
**Expenses of Determination**

**2850.** At the time of the submission of proofs, the board shall collect from each claimant the fee established pursuant to Section 1528.

*(Amended by Stats. 1976, Ch. 545; Amended by Stats. 2003, Ch. 741.)*

**2851.** At the time of, or as soon as practicable after the mailing of, its order of determination the board shall compute the entire expense it has incurred in performing the duties prescribed in this chapter, including salaries, wages, traveling expenses, and all costs of whatever character which are properly chargeable to the proceeding.

**2852.** If the total amount of expense exceeds the total amount received from claimants at the time of submission of proofs, the excess expense shall be equitably apportioned by the board against the parties to the proceeding.

**2853.** A statement setting forth the expense and the apportionments thereof against the respective parties shall be sent by registered mail by the board to each of the parties and filed with the court.

**2854.** (Repealed by Stats. 1955, Ch. 629.)

**2855.** Upon application in writing by any party aggrieved within 30 days after the statement of expense and the apportionment thereof has been mailed to the parties, the court shall after expiration of said period set for hearing the determination of any objections to the expense or to the apportionments thereof.

**2856.** The clerk of the court shall, at least 10 days prior to the date of hearing, give notice thereof by mail to all parties.

**2857.** If no objection is filed with the court within the prescribed periods the court upon ex parte application of the board shall enter a judgment against the parties in favor of the Board in the amounts apportioned to them.

**2858.** Any party failing to object to the expense or the apportionments thereof waives all objections thereto.

**2859.** Upon the hearing of objections to the expense or the apportionments thereof the court shall determine the expense and its apportionment as the court deems equitable and shall enter judgment against the parties in favor of the board in the amounts apportioned to them.

**2860-2861.** (Repealed by Stats. 1963, Ch. 329.)

**2862.** All money paid to or collected by the board, as provided in this article, shall be paid, at least once each month, accompanied by a detailed statement thereof, into the Water Resources Control Board Revolving Fund, which fund is continued in existence.

**2863.** All or any part of the money in the Water Resources Control Board Revolving Fund may be drawn from the State Treasury upon the approval of the Department of Finance without the submission of receipts, vouchers, or itemized statements, and used by the board in paying costs of making determinations of water rights as provided in this part.

*(Amended by Stats. 1974, Ch. 1221.)*

**2864.** If the funds available for use by the board are inadequate to enable it to undertake the expense of any proceeding under this chapter or if in its judgment reimbursement for the expense of any such proceeding is not reasonably certain, it may refuse to proceed with its investigation and to undertake the proceeding, unless and until such provision is made by persons interested as may be satisfactory to the board and deemed by it sufficient to secure reimbursement or payment to it for its expenses.

**2865.** During the pendency of any proceedings under this chapter, the board, after at least 20 days' notice to the parties, may order interim or partial payments of the expense to be made by the parties as the board deems proper and equitable under the circumstances.

*(Repealed by Stats. 1963, Ch. 330; Added by Stats. 2003, Ch. 741.)*

**2866.** The Department of Finance shall, from time to time, review the status of the Water Resources Control Board Revolving Fund to determine whether there are excess amounts of money therein not needed to carry out the provisions of this chapter. If the Department of Finance determines there are such excess amounts of money in the fund, it shall notify the State Controller and the State Controller shall transfer such excess amounts of money to the General Fund.

**2868.** If a party fails to pay the expenses apportioned to that party when due, the board may refer the matter for collection of the unpaid expenses pursuant to Section 1536.

*(Added by Stats. 2003, Ch. 741.)*

#### **CHAPTER 4. MODIFICATION OF DECREES**

**2900.** In rendering its decree for the determination of rights to water, whether in suits referred to the board under the provisions of Chapter 1 of this part or in adjudications under the provisions of Chapter 3 of this part, the court may provide that the board or any party affected by the decree may, at any time within three years from entry thereof, apply to the court for a modification of the decree insofar only as the decree determines quantities of water, and after hearing the motion and any competent and admissible evidence offered in support of or against the motion the court may modify the decree by increasing or decreasing the quantities of water therein allowed.

**PART 5.**  
**RECORDATION OF WATER EXTRACTIONS AND DIVERSIONS**

Filing Fees, see Water Code Section 1525.

**4999.** The Legislature finds and declares that by reason of the combination of light rainfall, concentrated population, the transition of considerable areas of land from agricultural use to urban use, and a similar dependence on ground water supplies which prevails in the Counties of Riverside, San Bernardino, Los Angeles, and Ventura, together with the fact that most such underground water supplies are overdrawn, it is necessary that the provisions of this part apply to said counties only.

*(Amended by Stats. 1959, Ch. 526)*

**5000.** As used in this Part 5, the following terms shall have the respective meanings stated below, viz:

(a) "Ground water" means water beneath the surface of the ground whether or not flowing through known and definite channels.

(b) "Surface water" means water on the surface of the ground.

(c) "Four counties" means the Counties of Riverside, San Bernardino, Los Angeles, and Ventura.

(d) "Person" means all persons whether natural or artificial, including the United States of America, the State of California, and all political subdivisions, districts, municipalities and public agencies of or in either the State or the United States.

(e) "Sources" means any point of diversion or extraction of water and includes among other things wells, tunnels, and headworks.

**5001.** Each person who, after 1955, extracts ground water in excess of 25 acre-feet in any year shall file with the board on or before March 1st of the succeeding year a "Notice of Extraction and Diversion of Water" (hereinafter called "notice") in the form provided in Section 5002; provided, however, that no notice need be filed with respect to, and there shall not be required to be included in any such notice, (a) information concerning the extraction or diversion of water from a source from which less than 10 acre-feet has been taken during such year, (b) information concerning a taking or diversion of surface water for the purpose of generating electrical energy and other nonconsumptive uses, and for incidental uses in connection therewith, or (c) information concerning extractions or diversions of water which are included in annual reports filed with a court or the board by a watermaster appointed by a court or pursuant to statute to administer a final judgment determining rights to water, which reports identify the persons who have extracted or diverted water and give the general place of use and the quantity of water which has been extracted or diverted from each source.

**5002.** Each notice shall be on a form provided by the board. The first notice filed by any person shall state:

(a) The name of the person extracting ground water or diverting surface water.

(b) The quantity of water taken and the method of measurement used by such person or his predecessor in interest in each preceding year from each surface or ground water source; provided, that if the period of such taking exceeds 10 years, such person is not required to state such quantities for any period greater than the preceding 10 calendar years.

(c) The location (sufficient for identification) of each surface or ground water source through or by means of which water has been taken, and if any person or persons other than the person filing said notice claims any interest in such source or the right to extract water therefrom, the name or names, so far as known, of such other person or persons.

(d) A general description of the area in which such water has been used.

(e) Any other facts which the board may require by general regulation and which tend to prove the facts required by this section to be stated, the origin of water supplying any ground water source mentioned in the notice, water levels in any such source, or the extent of any ground water basin from which such water is withdrawn.

(f) Any person diverting only surface water and not more than 25 acre-feet of ground water in any year need not file such notice for such year.

Notices, other than the first notice filed, shall state, in addition to the name of the person extracting or diverting such water:

First: The quantity of water taken from each surface and ground water source from which such person received any water in the preceding calendar year.

Second: Location of each such surface and ground water source through or by means of which water has been taken in such preceding year. This may be stated, so far as applicable, by reference to the water sources described in the original notice.

Third: If such person diverts surface water in excess of three miner's inches, such person shall further state in said notice the period or periods of such diversion, and the maximum and minimum flows so diverted in each period.

Fourth: Any other facts which the board may require by general regulation, and which tend to prove facts required by this subdivision to be stated, the origin of water supplying any surface or ground water source mentioned in the notice, water levels or flow in any such source, or the extent or origin of the water source supplying the ground water supply from which such water is extracted.

**5003.** No prescriptive right that might otherwise accrue to extract ground water shall arise or accrue to, nor shall any statute of limitations operate in regard to the ground water in the four counties after the year 1956 in favor of any person required to file a notice of extraction and diversion of water, until that person files with the board the first "Notice of Extraction and Diversion of Water" substantially in the form mentioned in Section 5002. As to each person who fails to file that notice by the end of the year in 1957, it shall be deemed for the period from that time until the first notice of the person is filed, that no claim of right to the extraction of ground water from any source in the four counties has been made by the person, and that water extracted by the person from the ground water source during that period has not been devoted to or used for any beneficial use. The beneficial use of water from

any ground water source within the four counties in any year by the person shall be deemed not to exceed the quantity reported in the notice filed for that year.

*(Added by Stats. 1955, Ch. 1869; Amended by Stats 1957, Ch.1932; Amended by Stats 1959, Ch. 526; Amended by Stats. 2006, Ch.538.)*

**5004.** After the year 1959, failure to file with the board a notice for any calendar year within six months after the close of such calendar year shall be deemed equivalent for all purposes to nonuse for such year of any ground water within the four counties by each person failing to so file a notice within said period; provided, that this section and Section 5003 shall not apply to any person whose aggregate extractions of ground water in any year does not exceed 25 acre-feet nor to any extractions of ground water with respect to which no notice is required to be filed under this part.

**5005.** Except as specified in Section 5004, failure to file the notice or delay in filing the same shall not cause the loss of rights to ground water which existed on January 1, 1956.

**5006.** Each notice shall be sworn to and shall be accompanied by a filing fee which shall be fixed by the board pursuant to Section 1529.

*(Added by Stats. 1955, Ch. 3467; Amended by Stats. 1957, Ch. 1932; Amended by Stats. 2003, Ch. 741).*

**5007.** Any person may apply to the board to investigate the facts stated in any specified notice so filed and to state in writing its determination of the facts found by it upon such investigation. The cost of such investigation and determination shall be paid by such applicant by such deposits or in such payments as may be fixed by the board. In the event the board makes a determination which differs in any material respect from the facts contained in the notice, then, prior to making its final determination, the board shall notify both the person filing said notice and the person requesting a determination of facts of its proposed findings, and shall invite either party to submit further information prior to making its final determination, and no such final determination shall be made until sixty (60) days after the parties have been so notified of the board's proposed determination.

In any action or proceeding hereafter pending in which the facts, or any of them, contained in the notices so filed are material, such notices shall not be evidence of any fact stated therein, but such determination by the board shall be prima facie evidence of said facts.

**5008.** The making of any wilful misstatement in any notice shall be a misdemeanor, punishable by a fine of not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail for not to exceed six months, or both.

**5009.** (a) (1) Notwithstanding any other provision of this part, on and after January 1, 2005, each person who extracts groundwater in a board-designated local area, and who is otherwise subject to this part, shall file the required notice with the appropriate local agency designated pursuant to subdivision (e), instead of the board, in accordance with this part. The notice shall be on a form provided

by the local agency and the content of the form shall be determined by the local agency in accordance with Section 5002. To the extent possible, the form shall consolidate the notice required under this section with other reports required by the local agency relating to the extraction of groundwater.

(2) A person who is subject to this section is subject to this part in the same manner and to the same extent as a person who files his or her notice with the board.

(b) Each notice filed with the local agency may include a filing fee determined by the local agency. If the local agency chooses to impose a filing fee, the local agency shall calculate the amount of the fee to pay for administrative expenses incurred in connection with the processing, compiling, and retaining of the notices, but in no event shall the fee amount exceed that amount charged by the board pursuant to Section 5006.

(c) The local agency shall make available to governmental agencies the information collected pursuant to this section.

(d) For the purposes of this section:

(1) "Board-designated local area" means the area entirely within the jurisdiction of the local agency that the board has determined shall be subject to this section and any area for which the local agency has formally agreed to accept the required notice.

(2) "Local agency" means the local public agency or court appointed watermaster that has been designated by the board in accordance with subdivision (e).

(e) The board shall designate an entity as a local agency for the purposes of this section if the board determines that all of the following apply:

(1) The entity has volunteered to be designated.

(2) The entity has responsibilities relating to the extraction or use of groundwater.

(3) The entity has made satisfactory arrangements with the board to identify which groundwater extractors are within the designated local area and to avoid the submission of notices to both the board and one or more local agencies.

(4) The entity has made satisfactory arrangements with the board to maintain records filed under this part for extractions within the designated local area, and to make those records available to governmental agencies.

*(Added by Stats. 2004, Ch. 535; Amended by Stats. 2006, Ch. 374.)*

## **PART 5.1.**

### **STATEMENTS OF WATER DIVERSIONS AND USE**

**5100.** As used in this part:

(a) "Best available technologies" means technologies at the highest technically practical level, using flow totaling devices, and if necessary, data loggers and telemetry.

(b) "Best professional practices" means practices attaining and maintaining the accuracy of measurement and reporting devices and methods.

(c) "Diversion" means taking water by gravity or pumping from a surface

stream or subterranean stream flowing through a known and definite channel, or other body of surface water, into a canal, pipeline, or other conduit, and includes impoundment of water in a reservoir.

(d) "Person" means all persons whether natural or artificial, including the United States of America, State of California, and all political subdivisions, districts, municipalities, and public agencies.

*(Added by Stats. 1965, Ch. 1430; Amended by Stats. 2007, Ch. 675; Amended by Stats. 2009, 7th Ex. Sess, Ch. 2)*

**5101.** Each person who, after December 31, 1965, diverts water shall file with the board, prior to July 1 of the succeeding year, a statement of his or her diversion and use, except that a statement is not required to be filed if the diversion is any of the following:

(a) From a spring that does not flow off the property on which it is located and from which the person's aggregate diversions do not exceed 25 acre-feet in any year.

(b) Covered by a registration for small domestic use, small irrigation use, or livestock stockpond uses, or permit or license to appropriate water on file with the board.

(c) Included in a notice filed pursuant to Part 5 (commencing with Section 4999).

(d) Regulated by a watermaster appointed by the department and included in annual reports filed with a court or the board by the watermaster, which reports identify the persons who have diverted water and describe the general purposes and the place, the use, and the quantity of water that has been diverted from each source.

(e) Included in annual reports filed with a court or the board by a watermaster appointed by a court or pursuant to statute to administer a final judgment determining rights to water, which reports identify the persons who have diverted water and give the general place of use and the quantity of water that has been diverted from each source.

(f) For use in compliance with Article 2.5 (commencing with Section 1226) or Article 2.7 (commencing with Section 1228) of Chapter 1 of Part 2.

(g) A diversion that occurs before January 1, 2009, if any of the following applies:

(1) The diversion is from a spring that does not flow off the property on which it is located, and the person's aggregate diversions do not exceed 25 acre-feet in any year.

(2) The diversion is covered by an application to appropriate water on file with the board.

(3) The diversion is reported by the department in its hydrologic data bulletins.

(4) The diversion is included in the consumptive use data for the Delta lowlands published by the department in its hydrologic data bulletins.

*(Added by Stats. 1965, Ch. 1430; Amended by Stats. 1967, Ch. 62; Amended by Stats. 1974, Ch. 140; Amended by Stats. 2009, 7th Ex. Sess, Ch. 2; Amended by Stats. 2011, Ch. 579 (A.B. 964).)*

**5102.** The statement may be filed either by the person who is diverting water or, on his behalf, by an agency which he designates and which maintains a record of the water diverted. A separate statement shall be filed for each point of diversion.  
*(Added by Stats. 1965, Ch. 1430; Amended by Stats. 1967, Ch. 62.)*

**5103.** Each statement shall be prepared on a form provided by the board. The statement shall include all of the following information:

(a) The name and address of the person who diverted water and of the person filing the statement.

(b) The name of the stream or other source from which water was diverted, and the name of the next major stream or other body of water to which the source is tributary.

(c) The place of diversion. The location of the diversion works shall be depicted on a specific United States Geological Survey topographic map, or shall be identified using the California Coordinate System, or latitude and longitude measurements. If assigned, the public land description to the nearest 40-acre subdivision and the assessor's parcel number shall also be provided.

(d) The capacity of the diversion works and of the storage reservoir, if any, and the months in which water was used during the preceding calendar year.

(e) (1) On and after January 1, 2012, monthly records of water diversions. The measurements of the diversion shall be made using best available technologies and best professional practices. Nothing in this paragraph shall be construed to require the implementation of technologies or practices by a person who provides to the board documentation demonstrating that the implementation of those practices is not locally cost effective.

(2) (A) The terms of, and eligibility for, any grant or loan awarded or administered by the department, the board, or the California Bay-Delta Authority on behalf of a person that is subject to paragraph (1) shall be conditioned on compliance with that paragraph.

(B) Notwithstanding subparagraph (A), the board may determine that a person is eligible for a grant or loan even though the person is not complying with paragraph (1), if both of the following apply:

(i) The board determines that the grant or loan will assist the grantee or loan recipient in complying with paragraph (1).

(ii) The person has submitted to the board a one-year schedule for complying with paragraph (1).

(C) It is the intent of the Legislature that the requirements of this subdivision shall complement and not affect the scope of authority granted to the board by provisions of law other than this article.

(f) The purpose of use.

(g) A general description of the area in which the water was used. The location of the place of use shall be depicted on a specific United States Geological Survey topographic map and on any other maps with identifiable landmarks. If assigned, the public land description to the nearest 40-acre subdivision and the assessor's parcel number shall also be provided.

(h) The year in which the diversion was commenced as near as is known.

*(Added by Stats. 1965, Ch. 1430; Amended by Stats. 2007, Ch. 675; Amended by Stats. 2009, 7th Ex. Sess, Ch. 2)*

**5104.** (a) Supplemental statements shall be filed at three-year intervals, prior to July 1 of the year next succeeding the end of each three-year interval. They shall contain the quantity of water diverted and the rate of diversion by months in each of the preceding three calendar years and any change in the other information contained in the preceding statement.

(b) If there is a change in the name or address of the person diverting the water, a supplemental statement shall be filed with the board that includes the change in name or address.

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

**5105.** Upon failure of any person to file a statement required by this part, the board may, at the expense of such person, investigate and determine in writing the facts required by either Sections 5103 or 5104, provided the board first gives such person written notice of its intention to investigate and determine the facts and 60 days in which to file the statement without penalty.

**5106.** (a) Neither the statements submitted under this part nor the determination of facts by the board pursuant to Section 5105 shall establish or constitute evidence of a right to divert or use water.

(b) (1) The board may rely on the names and addresses included in statements submitted under this part for the purpose of determining the names and addresses of persons who are to receive notices with regard to proceedings before the board.

(2) Notwithstanding paragraph (1), any person may submit, in writing, a request to the board to provide notification to a different address, and the board shall provide the notification to that address.

(3) If the board provides notice to persons who file statements under this part, the notice shall not be determined to be inadequate on the basis that notice was not received by a person, other than a party to whom the board's action is directed, who fails to file a statement required to be filed under this part.

(4) This subdivision does not affect the requirement in Section 2527 to provide notice to all persons who own land that appears to be riparian to the stream system.

(c) In any proceeding before the board to determine whether an application for a permit to appropriate water should be approved, any statement submitted under this part or determination by the board pursuant to Section 5105 is evidence of the facts stated therein.

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

**5107.** (a) The making of any willful misstatement pursuant to this part is a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail for not to exceed six months, or both.

(b) Any person who fails to file a statement required to be filed under this part for a diversion or use that occurs after January 1, 2009, who tampers with any measuring device, or who makes a material misstatement pursuant to this part may be liable civilly as provided in subdivisions (c) and (d).

(c) Civil liability may be administratively imposed by the board pursuant to Section 1055 in an amount not to exceed the following amounts:

(1) For failure to file a statement, one thousand dollars (\$1,000), plus five hundred dollars (\$500) per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the board has called the violation to the attention of that person.

(2) For a violation resulting from a physical malfunction of a measuring device not caused by the person or any other unintentional misstatement, two hundred fifty dollars (\$250), plus two hundred fifty dollars (\$250) per day for each additional day on which the measuring device continues to malfunction or the misstatement is not corrected if the person fails to correct or repair the measuring device or correct the misstatement within 60 days after the board has called the malfunction or violation to the attention of that person.

(3) For knowingly tampering with any measuring device or knowingly making a material misstatement in a statement filed under this part, twenty-five thousand dollars (\$25,000), plus one thousand dollars (\$1,000) for each day on which the violation continues if the person fails to correct the violation within 30 days after the board has called the violation to the attention of that person.

(4) For any other violation, five hundred dollars (\$500), plus two hundred fifty dollars (\$250) for each additional day on which the violation continues if the person fails to correct the violation within 30 days after the board has called the violation to the attention of that person.

(d) When an additional penalty may be imposed under subdivision (c) for failure to correct a violation or correct or repair a malfunctioning measuring device within a specified period after the violation has been called to a person's attention by the board, the board, for good cause, may provide for a longer period for correction of the problem, and the additional penalty shall not apply if the violation is corrected within the period specified by the board.

(e) In determining the appropriate amount, the board shall consider all relevant circumstances, including, but not limited to, all of the following factors:

- (1) The extent of harm caused by the violation.
- (2) The nature and persistence of the violation.
- (3) The length of time over which the violation occurs.
- (4) Any corrective action undertaken by the violator.

(f) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal.

*(Amended by Stats. 1996, Ch. 667; Amended by Stats. 2003, Ch. 741; Amended by Stats. 2009, 7th Ex. Sess, Ch. 2)*

**5108.** *(Repealed by Stats. 2009, 7th Ex. Sess, Ch. 2)*

## **DIVISION 4. WELLS, PUMPING PLANTS, CONDUITS AND STREAMS**

### **CHAPTER 6. USE OF STREAMS AS CONDUITS**

**7075.** Water which has been appropriated may be turned into the channel of another stream, mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another shall not be diminished.

## **DIVISION 6. CONSERVATION, DEVELOPMENT, AND UTILIZATION OF STATE WATER RESOURCES**

### **PART 1.5. THE CALIFORNIA WATER PLAN**

**10004.** (a) The plan for the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state which is set forth and described in Bulletin No. 1 of the State Water Resources Board entitled "Water Resources of California," Bulletin No. 2 of the State Water Resources Board entitled, "Water Utilization and Requirements of California," and Bulletin No. 3 of the department entitled, "The California Water Plan," with any necessary amendments, supplements, and additions to the plan, shall be known as "The California Water Plan."

(b) (1) The department shall update The California Water Plan on or before December 31, 2003, and every five years thereafter. The department shall report the amendments, supplements, and additions included in the updates of The California Water Plan, together with a summary of the department's conclusions and recommendations, to the Legislature in the session in which the updated plan is issued.

(2) The department shall establish an advisory committee, comprised of representatives of agricultural and urban water suppliers, local government, business, production agriculture, and environmental interests, and other interested parties, to assist the department in the updating of The California Water Plan. The department shall consult with the advisory committee in carrying out this section. The department shall provide written notice of meetings of the advisory committee to any interested person or entity that request the notice. The meetings shall be open to the public.

(3) The department shall release a preliminary draft of The California Water Plan, as updated, upon request, to interested persons and entities throughout the state for their review and comments. The department shall provide these persons and entities an opportunity to present written or oral comments on the preliminary draft. The department shall consider these comments in the preparation of the final publication of The California Water Plan, as updated.

*(Added by Stats. 1959, Ch. 2053; Amended by Stats. 1991, Ch. 620; Amended by Stats. 1999, Ch. 210 and Stats. 2000, Ch. 720.)*

**10004.5** As part of the requirement of the department to update The California Water Plan pursuant to subdivision (b) of Section 10004, the department shall include in the plan a discussion of various strategies, including, but not limited to, those relating to the development of new water storage facilities, water conserva-

tion, water recycling, desalination, conjunctive use, and water transfers that may be pursued in order to meet the future water needs of the state. The department shall also include a discussion of the potential for alternative water pricing policies to change current and projected uses. The department shall include in the plan a discussion of the potential advantages and disadvantages of each strategy and an identification of all federal and state permits, approvals, or entitlements that are anticipated to be required in order to implement the various components of the strategy.

*(Added by Stats. 1999, Ch. 210; Amended by Stats. 2000, Ch. 720.)*

**10004.6.** (a) As part of updating The California Water Plan every five years pursuant to subdivision (b) of Section 10004, the department shall conduct a study to determine the amount of water needed to meet the state's future needs and to recommend programs, policies, and facilities to meet those needs.

(b) The department shall consult with the advisory committee established pursuant to subdivision (b) of Section 10004 in carrying out this section.

(c) On or before January 1, 2002, and one year prior to issuing each successive update to The California Water Plan, the department shall release a preliminary draft of the assumptions and other estimates upon which the study will be based, to interested persons and entities throughout the state for their review and comments. The department shall provide these persons and entities an opportunity to present written or oral comments on the preliminary draft. The department shall consider these documents when adopting the final assumptions and estimates for the study. For the purpose of carrying out this subdivision, the department shall release, at a minimum, assumptions and other estimates relating to all of the following:

(1) Basin hydrology, including annual rainfall, estimated unimpaired stream flow, depletions, and consumptive uses.

(2) Groundwater supplies, including estimates of sustainable yield, supplies necessary to recover overdraft basins, and supplies lost due to pollution and other groundwater contaminants.

(3) Current and projected land use patterns, including the mix of residential, commercial, industrial, agricultural, and undeveloped lands.

(4) Environmental water needs, including regulatory instream flow requirements, nonregulated instream uses, and water needs by wetlands, preserves, refuges, and other managed and unmanaged natural resource lands.

(5) Current and projected population.

(6) Current and projected water use for all of the following:

(A) Interior uses in a single-family dwelling.

(B) Exterior uses in a single-family dwelling.

(C) All uses in a multifamily dwelling.

(D) Commercial uses.

(E) Industrial uses.

(F) Parks and open spaces.

(G) Agricultural water diversion and use.

(7) Evapotranspiration rates for major crop types, including estimates

of evaporative losses by irrigation practice and the extent to which evaporation reduces transpiration.

(8) Current and projected adoption of urban and agricultural conservation practices.

(9) Current and projected supplies of water provided by water recycling and reuse.

(d) The department shall include a discussion of the potential for alternative water pricing policies to change current and projected water uses identified pursuant to paragraph (6) of subdivision (c).

(e) Nothing in this section requires or prohibits the department from updating any data necessary to update The California Water Plan pursuant to subdivision (b) of Section 10004.

*(Added by Stats. 2000, Ch. 720; Added by Stats. 2007, Ch. 675.)*

**10005.** (a) It is hereby declared that the people of the state have a primary interest in the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state by all individuals and entities and that it is the policy of the state that The California Water Plan, with any necessary amendments, supplements, and additions to the plan, is accepted as the master plan which guides the orderly and coordinated control, protection, conservation, development, management and efficient utilization of the water resources of the state.

(b) The declaration set forth in subdivision (a) does not constitute approval for the construction of specific projects or routes for transfer of water, or for financial assistance, by the state, without further legislative action, nor shall the declaration be construed as a prohibition of the development of the water resources of the state by any entity.

*(Added by Stats. 1959, Ch. 2053; Amended by Stats. 1991, Ch. 620.)*

**10005.1.** The department or, at the department's request, the California Water Commission, shall conduct a series of hearings with interested persons, organizations, local, state, and federal agencies, and representatives of the diverse geographical areas and interests of the state.

*(Added by Stats. 1991, Ch. 620.)*

**10005.2.** Prior to holding a hearing pursuant to Section 10005.1, the department shall give notice by mail of the hearing to persons and entities which have requested notice and have provided their name and address to the department.

*(Added by Stats. 1991, Ch. 620.)*

**10006.** The provisions of this part do not repeal or modify any of the provisions of Part 3 of this division.<sup>1</sup>

*(Added by Stats. 1959, Ch. 2053.)*

<sup>1</sup>See Section 11100 et. seq.

**10007.** Notwithstanding anything contained in this part, all applications heretofore filed by the Department of Finance or by the Department of Water Resources under Part 2 of Division 6<sup>1</sup> shall remain valid and shall retain and have the status and priority accorded to such applications as now or hereafter provided in said Part 2.

*(Added by Stats. 1959, Ch. 2053.)*

<sup>1</sup>See, section 10500 et seq.

**10008.** The Legislature hereby finds and declares that agreements which provide for the transfer of water from the federal Central Valley Project to public entities supplying water for domestic or irrigation use offer potential benefits to California's hard-pressed farmers and to California's water-dependent urban areas.

It is the intent of the Legislature that these contracts be entered into for the purposes of strengthening California's economy, serving the public, and protecting the environment.

The director shall continue to pursue negotiations with the United States Bureau of Reclamation to contract for the interim rights to stored water from the federal Central Valley Project for use in the State Water Resources Development System by state water supply contractors.

*(Added by Stats. 1986, Ch. 1241.)*

**10009.** The director shall pursue discussions with the United States Bureau of Reclamation to permit persons and public entities which have entitlements to water from the federal Central Valley Project, to enter into legally binding contracts with any public entity which supplies water for domestic use, irrigation use, or environmental protection in this state for the transfer of federal water entitlements during times of shortage.

*(Added by Stats. 1986, Ch. 1241.)*

**10010.** (Repealed by Stats. 2001, Ch. 745.)

**10011.** (a) In preparing the California Water Plan, the director shall conduct at least one public hearing within the boundaries of the Sacramento-San Joaquin Delta, and shall solicit the comments of water agencies within the delta, agricultural groups representative of delta agricultural activity, environmental groups concerned with protecting delta wildlife habitat, and groups representative of those who utilize water exported from the delta.

(b) The California Water Plan shall include a discussion of various alternatives, including their advantages and disadvantages, for improving and protecting the current uses and configuration of the Sacramento-San Joaquin Delta.

(c) Subdivisions (a) and (b) shall be implemented only to the extent money is appropriated in the annual Budget Act to carry out this section.

*(Added by Stats. 1992, Ch. 953.)*

**10013.** The department, as a part of the preparation of the department's Bulletin 160-03, shall include in the California Water Plan a report on the development of regional and local water projects within each hydrologic region of the state,

as described in the department's Bulletin 160-98, to improve water supplies to meet municipal, agricultural, and environmental water needs and minimize the need to import water from other hydrologic regions. The report shall include, but is not limited to, regional and local water projects that use technologies for desalting brackish groundwater and ocean water, reclaiming water for use within the community generating the water to be reclaimed, the construction of improved potable water treatment facilities so that water from sources determined to be unsuitable can be used, and the construction of dual water systems and brine lines, particularly in connection with new developments and when replacing water piping in developed or redeveloped areas.

*(Added by Stats. 2001, Ch. 320; Amended by Stats. 2002, Ch. 664.)*

## **PART 2.**

### **APPROPRIATION OF WATER BY DEPARTMENT OF WATER RESOURCES**

**10500.** The department shall make and file applications for any water which in its judgment is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the state.

Any application filed pursuant to this part shall be made and filed pursuant to Part 2 (commencing with Section 1200) of Division 2 of this code and the rules and regulations of the State Water Resources Control Board relating to the appropriation of water insofar as applicable thereto.

Applications filed pursuant to this part shall have priority, as of the date of filing, over any application made and filed subsequent thereto. The statutory requirements of Part 2 (commencing at Section 1200) of Division 2 relating to diligence shall not apply to applications filed under this part, except as otherwise provided in Section 10504.

*(Added by Stats. 1943, Ch. 370; Amended by Stats. 1983, Ch. 481.)*

**10501-10503.**(Repealed by Stats. 1953, Ch. 1522.)

**10504.** All applications made and filed pursuant to Section 10500 shall be transferred to the State Water Resources Control Board and held by the board for the purposes of this part. The board may release from priority or assign any portion of any application filed under this part when the release or assignment is for the purpose of development not in conflict with such general or coordinated plan or with water quality objectives established pursuant to law. The assignee of any such application whether heretofore or hereafter assigned, is subject to all the requirements of diligence as provided in Part 2 (commencing with Section 1200) of Division 2 of this code. "Assignee" as used herein includes, but is not limited to, state agencies, commissions and departments, and the United States of America or any of its departments or agencies.

*(Added by Stats. 1943, Ch. 370; Amended by Stats. 1967, Ch. 284.)*

**10504.01.** Each petition for assignment of all or a portion of an application filed pursuant to this part, which application has not been completed in accordance with law and the regulations of the board, shall include as a part thereof a proposed completed application consistent with the requested assignment, and describing petitioner's proposed project. As soon as practicable after the receipt of such petition the board shall issue and deliver a notice of the petition and proposed completed application in accordance with Article 1 (commencing with Section 1300), Chapter 3, Part 2, Division 2 of this code and shall also deliver a copy of the notice to the department and to the board of supervisors of each county in which the water originates and in which the water is to be used. Further procedure with respect to each such petition shall be in accordance with Chapters 3 (commencing with Section 1300), 4 (commencing with Section 1330) and 5 (commencing with Section 1340), Part 2, Division 2 of this code relating to notice, protests, hearing, and action on applications for permits to appropriate water. The hearing shall be for the purpose of determining whether the application should be assigned pursuant to Sections 10504 and 10505 and whether the proposed completed application submitted by the petitioner should be approved in whole or in part. When the board's determination is favorable to the petitioner, it shall assign all or a portion of the application to the petitioner, accept and approve the assigned portion, and issue a permit as in other cases provided by law. Any portion of the application which is not assigned shall remain with the board subject to further disposition by it pursuant to the provisions of this part.

Two or more petitions for assignment of the same or related applications may be consolidated for purposes of hearing and determination with each other and with other applications, in the discretion of the board.

*(Added by Stats. 1965, Ch. 989.)*

**10504.02.** Procedure with respect to petitions for assignment of all or a portion of applications filed pursuant to this part, which applications have been completed in accordance with law and the regulations of the board, shall be in accordance with the provisions of Section 10504.01 insofar as they are applicable.

*(Added by Stats. 1965, Ch. 989.)*

**10504.1.** Before any application made and filed pursuant to Section 10500 is assigned or released from priority, the State Water Resources Control Board shall hold a public hearing. Written notice of the time and place of the hearing shall be mailed, at least 45 days prior to the date set for the hearing, to the board of supervisors of each county in the area in which the water originates and in the area or areas in which the water is to be used. Any interested persons may appear at the hearing and present their views and objections as to the proposed action.

*(Added by Stats. 1959, Ch. 2099; Amended by Stats. 1967, Ch. 284.)*

**10504.2.** (Repealed by Stats. 1965, Ch. 989.)

**10504.5.** In order to insure that projects will be constructed in accordance with a general or coordinated plan for the development of water:

(a) The recipient of a release from priority or assignment under this part shall, before making any changes determined by the State Water Resources Control

Board to be substantial in the project in furtherance of which the release or assignment was made, submit such changes to the State Water Resources Control Board for its approval. The board shall approve any such change only if it determines that such change will not conflict with the general or coordinated plan or with water quality objectives established pursuant to law. All permits and licenses issued pursuant to applications so released or assigned shall contain terms conditioning such permits and licenses upon compliance with this subdivision.

(b) The holder of applications that have been assigned, or in favor of which a release from priority has been made, shall submit any proposed amendments to such applications to the State Water Resources Control Board. The board shall approve such amendments only if it determines that the amendments will not conflict with the general or coordinated plan or with water quality objectives established pursuant to law. The board shall notify the holder of the application of its approval or disapproval.

*(Added by Stats. 1959, Ch. 2101; Amended by Stats. 1965, Ch. 989.)*

**10505.** No priority under this part shall be released nor assignment made of any application that will, in the judgement of the board, deprive the county in which the water covered by the application originates of any such water necessary for the development of the county.

*(Added by Stats. 1943, Ch. 370; Amended by Stats. 1965, Ch. 989.)*

**10505.5.** Every application heretofore or hereafter made and filed pursuant to Section 10500, and held by the State Water Resources Control Board, shall be amended to provide, and any permit hereafter issued pursuant to such an application, and any license issued pursuant to such a permit, shall provide, that the application, permit, or license shall not authorize the use of any water outside of the county of origin which is necessary for the development of the county.

*(Added by Stats. 1969, Ch. 1359.)*

**10506.** Every state department or state officer, upon request of the department, shall furnish any service or assistance in the investigation of the need or feasibility of all or any part of such general or coordinated plan and the cost of construction, operation, and maintenance thereof, of the financing of construction and rates or returns that may be required to operate and maintain all or any part of the plan, of the amortization of bonded or other indebtedness that may be placed on all or any part of the plan for the cost of construction thereof, and shall render any other service which the department deems necessary for the maintenance of any priority in the State for the purposes of all or any part or unit of the plan and the future development and completion of it in the public interest.

*(Added by Stats. 1943, Ch. 370; Amended by Stats. 1957, Ch. 1932.)*

**10507.** (Repealed by Stats. 1996, Ch. 659.)

## **PART 2.6.**

### **URBAN WATER MANAGEMENT PLANNING**

**CHAPTER 1.**  
**GENERAL DECLARATION AND POLICY**

**10610.** This part shall be known and may be cited as the “Urban Water Management Planning Act.”

**10610.2.** (a) The Legislature finds and declares all of the following:

(1) The waters of the state are a limited and renewable resource subject to ever-increasing demands.

(2) The conservation and efficient use of urban water supplies are of statewide concern; however, the planning for that use and the implementation of those plans can best be accomplished at the local level.

(3) A long-term, reliable supply of water is essential to protect the productivity of California’s businesses and economic climate.

(4) As part of its long-range planning activities, every urban water supplier should make every effort to ensure the appropriate level of reliability in its water service sufficient to meet the needs of its various categories of customers during normal, dry, and multiple dry water years.

(5) Public health issues have been raised over a number of contaminants that have been identified in certain local and imported water supplies.

(6) Implementing effective water management strategies, including groundwater storage projects and recycled water projects, may require specific water quality and salinity targets for meeting groundwater basins water quality objectives and promoting beneficial use of recycled water.

(7) Water quality regulations are becoming an increasingly important factor in water agencies’ selection of raw water sources, treatment alternatives, and modifications to existing treatment facilities.

(8) Changes in drinking water quality standards may also impact the usefulness of water supplies and may ultimately impact supply reliability.

(9) The quality of source supplies can have a significant impact on water management strategies and supply reliability.

(b) This part is intended to provide assistance to water agencies in carrying out their long-term resource planning responsibilities to ensure adequate water supplies to meet existing and future demands for water.

*(Amended by Stats. 1995, Ch. 854; Amended by Stats. 2001, Ch. 644; Amended by Stats. 2002, Ch. 664.)*

**10610.4.** The Legislature finds and declares that it is the policy of the state as follows:

(a) The management of urban water demands and efficient use of water shall be actively pursued to protect both the people of the state and their water resources.

(b) The management of urban water demands and efficient use of urban water supplies shall be a guiding criterion in public decisions.

(c) Urban water suppliers shall be required to develop water management plans to actively pursue the efficient use of available supplies.

*(Amended by Stats. 1995, Ch. 854.)*

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**CHAPTER 2.**  
**DEFINITIONS**

**10611.** Unless the context otherwise requires, the definitions of this chapter govern the construction of this part.

**10611.5.** “Demand management” means those water conservation measures, programs, and incentives that prevent the waste of water and promote the reasonable and efficient use and reuse of available supplies.

*(Amended by Stats. 1995, Ch. 854.)*

**10612.** “Customer” means a purchaser of water from a water supplier who uses the water for municipal purposes, including residential, commercial, governmental, and industrial uses.

**10613.** “Efficient use” means those management measures that result in the most effective use of water so as to prevent its waste or unreasonable use or unreasonable method of use.

**10614.** “Person” means any individual, firm, association, organization, partnership, business, trust, corporation, company, public agency, or any agency of such an entity.

**10615.** “Plan” means an urban water management plan prepared pursuant to this part. A plan shall describe and evaluate sources of supply, reasonable and practical efficient uses, reclamation and demand management activities. The components of the plan may vary according to an individual community or area’s characteristics and its capabilities to efficiently use and conserve water. The plan shall address measures for residential, commercial, governmental, and industrial water demand management as set forth in Article 2 (commencing with Section 10630) of Chapter 3. In addition, a strategy and time schedule for implementation shall be included in the plan.

*(Amended by Stats. 1995, Ch. 854.)*

**10616.** “Public agency” means any board, commission, county, city and county, city, regional agency, district, or other public entity.

**10616.5.** “Recycled water” means the reclamation and reuse of wastewater for beneficial use.

*(Added by Stats. 1995, Ch. 854.)*

**10617.** “Urban water supplier” means a supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually. An urban water supplier includes a supplier or contractor for water, regardless of the basis of right, which distributes or sells for ultimate resale to customers. This part applies only to water supplied from public water systems subject to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

*(Amended by Stats. 1996, Ch. 1023.)*

**CHAPTER 3.**  
**URBAN WATER MANAGEMENT PLANS**

**Article 1.**  
**General Provisions**

**10620.** (a) Every urban water supplier shall prepare and adopt an urban water management plan in the manner set forth in Article 3 (commencing with Section 10640).

(b) Every person that becomes an urban water supplier shall adopt an urban water management plan within one year after it has become an urban water supplier.

(c) An urban water supplier indirectly providing water shall not include planning elements in its water management plan as provided in Article 2 (commencing with Section 10630) that would be applicable to urban water suppliers or public agencies directly providing water, or to their customers, without the consent of those suppliers or public agencies.

(d) (1) An urban water supplier may satisfy the requirements of this part by participation in areawide, regional, watershed, or basinwide urban water management planning where those plans will reduce preparation costs and contribute to the achievement of conservation and efficient water use.

(2) Each urban water supplier shall coordinate the preparation of its plan with other appropriate agencies in the area, including other water suppliers that share a common source, water management agencies, and relevant public agencies, to the extent practicable.

(e) The urban water supplier may prepare the plan with its own staff, by contract, or in cooperation with other governmental agencies.

(f) An urban water supplier shall describe in the plan water management tools and options used by that entity that will maximize resources and minimize the need to import water from other regions.

*(Amended by Stats. 1995, Ch. 854; Amended by Stats 2001, Ch. 320.)*

**10621.** (a) Each urban water supplier shall update its plan at least once every five years on or before December 31, in years ending in five and zero.

(b) Every urban water supplier required to prepare a plan pursuant to this part shall, at least 60 days prior to the public hearing on the plan required by Section 10642, notify any city or county within which the supplier provides water supplies that the urban water supplier will be reviewing the plan and considering amendments or changes to the plan. The urban water supplier may consult with, and obtain comments from, any city or county that receives notice pursuant to this subdivision.

(c) The amendments to, or changes in, the plan shall be adopted and filed in the manner set forth in Article 3 (commencing with Section 10640).

*(Added by Stats. 1983, Ch. 1009; Amended by Stats. 1991, Ch. 938; Amended by Stats. 1995, Ch. 854 and Stats. 2000, Ch. 297; Amended by Stats. 2007, Ch. 64.)*

## Article 2. Contents of Plans

**10630.** It is the intention of the Legislature, in enacting this part, to permit levels of water management planning commensurate with the numbers of customers served and the volume of water supplied.

**10631.** A plan shall be adopted in accordance with this chapter and shall do all of the following:

(a) Describe the service area of the supplier, including current and projected population, climate, and other demographic factors affecting the supplier's water management planning. The projected population estimates shall be based upon data from the state, regional, or local service agency population projections within the service area of the urban water supplier and shall be in five-year increments to 20 years or as far as data is available.

(b) Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments described in subdivision (a). If groundwater is identified as an existing or planned source of water available to the supplier, all of the following information shall be included in the plan:

(1) A copy of any groundwater management plan adopted by the urban water supplier, including plans adopted pursuant to Part 2.75 (commencing with Section 10750), or any other specific authorization for groundwater management.

(2) A description of any groundwater basin or basins from which the urban water supplier pumps groundwater. For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the urban water supplier has the legal right to pump under the order or decree. For basins that have not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current official departmental bulletin that characterizes the condition of the groundwater basin, and a detailed description of the efforts being undertaken by the urban water supplier to eliminate the long-term overdraft condition.

(3) A detailed description and analysis of the location, amount, and sufficiency of groundwater pumped by the urban water supplier for the past five years. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(4) A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the urban water supplier. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(c)(1) Describe the reliability of the water supply and vulnerability to seasonal or climatic shortage, to the extent practicable, and provide data for each of the following:

(A) An average water year.

(B) A single dry water year.

(C) Multiple dry water years.

(2) For any water source that may not be available at a consistent level of use, given specific legal, environmental, water quality, or climatic factors, describe plans to supplement or replace that source with alternative sources or water demand management measures, to the extent practicable.

(d) Describe the opportunities for exchanges or transfers of water on a short-term or long-term basis.

(e) (1) Quantify, to the extent records are available, past and current water use, over the same five-year increments described in subdivision (a), and projected water use, identifying the uses among water use sectors including, but not necessarily limited to, all of the following uses:

(A) Single-family residential.

(B) Multifamily.

(C) Commercial.

(D) Industrial.

(E) Institutional and governmental.

(F) Landscape.

(G) Sales to other agencies.

(H) Saline water intrusion barriers, groundwater recharge, or conjunctive use, or any combination thereof.

(I) Agricultural.

(2) The water use projections shall be in the same five-year increments described in subdivision (a).

(f) Provide a description of the supplier's water demand management measures. This description shall include all of the following:

(1) A description of each water demand management measure that is currently being implemented, or scheduled for implementation, including the steps necessary to implement any proposed measures, including, but not limited to, all of the following:

(A) Water survey programs for single-family residential and multifamily residential customers.

(B) Residential plumbing retrofit.

(C) System water audits, leak detection, and repair.

(D) Metering with commodity rates for all new connections and retrofit of existing connections.

(E) Large landscape conservation programs and incentives.

(F) High-efficiency washing machine rebate programs.

(G) Public information programs.

(H) School education programs.

(I) Conservation programs for commercial, industrial, and institutional accounts.

(J) Wholesale agency programs.

(K) Conservation pricing.

(L) Water conservation coordinator.

(M) Water waste prohibition.

(N) Residential ultra-low-flush toilet replacement programs.

(2) A schedule of implementation for all water demand management measures proposed or described in the plan.

(3) A description of the methods, if any, that the supplier will use to evaluate the effectiveness of water demand management measures implemented or described under the plan.

(4) An estimate, if available, of existing conservation savings on water use within the supplier's service area, and the effect of the savings on the supplier's ability to further reduce demand.

(g) An evaluation of each water demand management measure listed in paragraph (1) of subdivision (f) that is not currently being implemented or scheduled for implementation. In the course of the evaluation, first consideration shall be given to water demand management measures, or combination of measures, that offer lower incremental costs than expanded or additional water supplies. This evaluation shall do all of the following:

(1) Take into account economic and noneconomic factors, including environmental, social, health, customer impact, and technological factors.

(2) Include a cost-benefit analysis, identifying total benefits and total costs.

(3) Include a description of funding available to implement any planned water supply project that would provide water at a higher unit cost.

(4) Include a description of the water supplier's legal authority to implement the measure and efforts to work with other relevant agencies to ensure the implementation of the measure and to share the cost of implementation.

(h) Include a description of all water supply projects and water supply programs that may be undertaken by the urban water supplier to meet the total projected water use as established pursuant to subdivision (a) of Section 10635. The urban water supplier shall include a detailed description of expected future projects and programs, other than the demand management programs identified pursuant to paragraph (1) of subdivision (f), that the urban water supplier may implement to increase the amount of the water supply available to the urban water supplier in average, single-dry, and multiple-dry water years. The description shall identify specific projects and include a description of the increase in water supply that is expected to be available from each project. The description shall include an estimate with regard to the implementation timeline for each project or program.

(i) Describe the opportunities for development of desalinated water, including, but not limited to, ocean water, brackish water, and groundwater, as a long-term supply.

(j) For purposes of this part, urban water suppliers that are members of the California Urban Water Conservation Council and submit annual reports to that council in accordance with the "Memorandum of Understanding Regarding Urban Water Conservation in California," dated September 1991, may submit the annual reports identifying water demand management measures currently being implemented, or scheduled for implementation, to satisfy the requirements of subdivisions (f) and (g).

(k) Urban water suppliers that rely upon a wholesale agency for a source of water, shall provide the wholesale agency with water use projections from that agency for that source of water in five-year increments to 20 years or as far as data is available. The wholesale agency shall provide information to the urban water supplier for inclusion in the urban water supplier's plan that identifies and

quantifies, to the extent practicable, the existing and planned sources of water as required by subdivision (b), available from the wholesale agency to the urban water supplier over the same five-year increments, and during various water-year types in accordance with subdivision (c). An urban water supplier may rely upon water supply information provided by the wholesale agency in fulfilling the plan informational requirements of subdivisions (b) and (c).

*(Amended by Stats. 1993, Ch. 589; Amended by Stats. 1994, Ch. 366; Amended by Stats. 1995, Ch. 854 and Stats. 2000, Ch. 712; Amended by Stats. 2001, Ch. 643-644; Amended by Stats. 2002, Ch. 664, 969; Amended by Stats. 2004, Ch. 688; Amended by Stats. 2006, Ch. 538; Amended by Stats. 2009, Ch. 534.)*

**10631.1.** (a) The water use projections required by Section 10631 shall include projected water use for single-family and multifamily residential housing needed for lower income households, as defined in Section 50079.5 of the Health and Safety Code, as identified in the housing element of any city, county, or city and county in the service area of the supplier.

(b) It is the intent of the Legislature that the identification of projected water use for single-family and multifamily residential housing for lower income households will assist a supplier in complying with the requirement under Section 65589.7 of the Government Code to grant a priority for the provision of service to housing units affordable to lower income households.

*(Added by Stats. 2005, Ch. 727.)*

**10631.5.** (a) (1) Beginning January 1, 2009, the terms of, and eligibility for, a water management grant or loan made to an urban water supplier and awarded or administered by the department, state board, or California Bay-Delta Authority or its successor agency shall be conditioned on the implementation of the water demand management measures described in Section 10631, as determined by the department pursuant to subdivision (b).

(2) For the purposes of this section, water management grants and loans include funding for programs and projects for surface water or groundwater storage, recycling, desalination, water conservation, water supply reliability, and water supply augmentation. This section does not apply to water management projects funded by the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(3) Notwithstanding paragraph (1), the department shall determine that an urban water supplier is eligible for a water management grant or loan even though the supplier is not implementing all of the water demand management measures described in Section 10631, if the urban water supplier has submitted to the department for approval a schedule, financing plan, and budget, to be included in the grant or loan agreement, for implementation of the water demand management measures. The supplier may request grant or loan funds to implement the water demand management measures to the extent the request is consistent with the eligibility requirements applicable to the water management funds.

(4) (A) Notwithstanding paragraph (1), the department shall determine that an urban water supplier is eligible for a water management grant or loan even though the supplier is not implementing all of the water demand management measures described in Section 10631, if an urban water supplier submits to the

department for approval documentation demonstrating that a water demand management measure is not locally cost effective. If the department determines that the documentation submitted by the urban water supplier fails to demonstrate that a water demand management measure is not locally cost effective, the department shall notify the urban water supplier and the agency administering the grant or loan program within 120 days that the documentation does not satisfy the requirements for an exemption, and include in that notification a detailed statement to support the determination.

(B) For purposes of this paragraph, “not locally cost effective” means that the present value of the local benefits of implementing a water demand management measure is less than the present value of the local costs of implementing that measure.

(b) (1) The department, in consultation with the state board and the California Bay-Delta Authority or its successor agency, and after soliciting public comment regarding eligibility requirements, shall develop eligibility requirements to implement the requirement of paragraph (1) of subdivision (a). In establishing these eligibility requirements, the department shall do both of the following:

(A) Consider the conservation measures described in the Memorandum of Understanding Regarding Urban Water Conservation in California, and alternative conservation approaches that provide equal or greater water savings.

(B) Recognize the different legal, technical, fiscal, and practical roles and responsibilities of wholesale water suppliers and retail water suppliers.

(2) (A) For the purposes of this section, the department shall determine whether an urban water supplier is implementing all of the water demand management measures described in Section 10631 based on either, or a combination, of the following:

(i) Compliance on an individual basis.

(ii) Compliance on a regional basis. Regional compliance shall require participation in a regional conservation program consisting of two or more urban water suppliers that achieves the level of conservation or water efficiency savings equivalent to the amount of conservation or savings achieved if each of the participating urban water suppliers implemented the water demand management measures. The urban water supplier administering the regional program shall provide participating urban water suppliers and the department with data to demonstrate that the regional program is consistent with this clause. The department shall review the data to determine whether the urban water suppliers in the regional program are meeting the eligibility requirements.

(B) The department may require additional information for any determination pursuant to this section.

(3) The department shall not deny eligibility to an urban water supplier in compliance with the requirements of this section that is participating in a multiagency water project, or an integrated regional water management plan, developed pursuant to Section 75026 of the Public Resources Code, solely on the basis that one or more of the agencies participating in the project or plan is not implementing all of the water demand management measures described in Section 10631.

(c) In establishing guidelines pursuant to the specific funding authorization for any water management grant or loan program subject to this

section, the agency administering the grant or loan program shall include in the guidelines the eligibility requirements developed by the department pursuant to subdivision (b).

(d) Upon receipt of a water management grant or loan application by an agency administering a grant and loan program subject to this section, the agency shall request an eligibility determination from the department with respect to the requirements of this section. The department shall respond to the request within 60 days of the request.

(e) The urban water supplier may submit to the department copies of its annual reports and other relevant documents to assist the department in determining whether the urban water supplier is implementing or scheduling the implementation of water demand management activities. In addition, for urban water suppliers that are signatories to the Memorandum of Understanding Regarding Urban Water Conservation in California and submit biennial reports to the California Urban Water Conservation Council in accordance with the memorandum, the department may use these reports to assist in tracking the implementation of water demand management measures.

*(Added by Stats. 2002, Ch. 321; Amended by Stats. 2007, Ch. 628; Amended by Stats. 2009, 3rd Ex. Sess. Ch. 25.)*

**10631.7.** The department, in consultation with the California Urban Water Conservation Council, shall convene an independent technical panel to provide information and recommendations to the department and the Legislature on new demand management measures, technologies, and approaches. The panel shall consist of no more than seven members, who shall be selected by the department to reflect a balanced representation of experts. The panel shall have at least one, but no more than two, representatives from each of the following: retail water suppliers, environmental organizations, the business community, wholesale water suppliers, and academia. The panel shall be convened by January 1, 2009, and shall report to the Legislature no later than January 1, 2010, and every five years thereafter. The department shall review the panel report and include in the final report to the Legislature the department's recommendations and comments regarding the panel process and the panel's recommendations.

*(Added by Stats. 2007, Ch. 628.)*

**10632.** (a) The plan shall provide an urban water shortage contingency analysis which includes each of the following elements that are within the authority of the urban water supplier:

(1) Stages of action to be undertaken by the urban water supplier in response to water supply shortages, including up to a 50 percent reduction in water supply, and an outline of specific water supply conditions that are applicable to each stage.

(2) An estimate of the minimum water supply available during each of the next three water years based on the driest three-year historic sequence for the agency's water supply.

(3) Actions to be undertaken by the urban water supplier to prepare for, and implement during, a catastrophic interruption of water supplies including, but not limited to, a regional power outage, an earthquake, or other disaster.

(4) Additional, mandatory prohibitions against specific water use practices during water shortages, including, but not limited to, prohibiting the use of potable water for street cleaning.

(5) Consumption reduction methods in the most restrictive stages. Each urban water supplier may use any type of consumption reduction methods in its water shortage contingency analysis that would reduce water use, are appropriate for its area, and have the ability to achieve a water use reduction consistent with up to a 50 percent reduction in water supply.

(6) Penalties or charges for excessive use, where applicable.

(7) An analysis of the impacts of each of the actions and conditions described in paragraphs (1) to (6), inclusive, on the revenues and expenditures of the urban water supplier, and proposed measures to overcome those impacts, such as the development of reserves and rate adjustments.

(8) A draft water shortage contingency resolution or ordinance.

(9) A mechanism for determining actual reductions in water use pursuant to the urban water shortage contingency analysis.

(b) Commencing with the urban water management plan update due December 31, 2015, for purposes of developing the water shortage contingency analysis pursuant to subdivision (a), the urban water supplier shall analyze and define water features that are artificially supplied with water, including ponds, lakes, waterfalls, and fountains, separately from swimming pools and spas, as defined in subdivision (a) of Section 115921 of the Health and Safety Code.

*(Added by Stats. 1983, Ch. 1009; Amended by Stats. 1994, Ch. 366; Amended by Stats. 1995, Ch. 854; Amended by Stats. 2010, Ch. 42)*

**10633.** The plan shall provide, to the extent available, information on recycled water and its potential for use as a water source in the service area of the urban water supplier. The preparation of the plan shall be coordinated with local water, wastewater, groundwater, and planning agencies that operate within the supplier's service area, and shall include all of the following:

(a) A description of the wastewater collection and treatment systems in the supplier's service area, including a quantification of the amount of wastewater collected and treated and the methods of wastewater disposal.

(b) A description of the quantity of treated wastewater that meets recycled water standards, is being discharged, and is otherwise available for use in a recycled water project.

(c) A description of the recycled water currently being used in the supplier's service area, including, but not limited to, the type, place, and quantity of use.

(d) A description and quantification of the potential uses of recycled water, including, but not limited to, agricultural irrigation, landscape irrigation, wildlife habitat enhancement, wetlands, industrial reuse, groundwater recharge, indirect potable reuse, and other appropriate uses, and a determination with regard to the technical and economic feasibility of serving those uses.

(e) The projected use of recycled water within the supplier's service area at the end of 5, 10, 15, and 20 years, and a description of the actual use of recycled water in comparison to uses previously projected pursuant to this subdivision.

(f) A description of actions, including financial incentives, which may be

taken to encourage the use of recycled water, and the projected results of these actions in terms of acre-feet of recycled water used per year.

(g) A plan for optimizing the use of recycled water in the supplier's service area, including actions to facilitate the installation of dual distribution systems, to promote recirculating uses, to facilitate the increased use of treated wastewater that meets recycled water standards, and to overcome any obstacles to achieving that increased use.

*(Amended by Stats. 1995, Ch. 854; Amended by Stats. 2002, Ch. 261; Amended by Stats. 2009, Ch. 534.)*

**10634.** The plan shall include information, to the extent practicable, relating to the quality of existing sources of water available to the supplier over the same five-year increments as described in subdivision (a) of Section 10631, and the manner in which water quality affects water management strategies and supply reliability.

*(Added by Stats. 2001, Ch. 644.)*

### **Article 2.5. Water Service Reliability**

**10635.** (a) Every urban water supplier shall include, as part of its urban water management plan, an assessment of the reliability of its water service to its customers during normal, dry, and multiple dry water years. This water supply and demand assessment shall compare the total water supply sources available to the water supplier with the total projected water use over the next 20 years, in five-year increments, for a normal water year, a single dry water year, and multiple dry water years. The water service reliability assessment shall be based upon the information compiled pursuant to Section 10631, including available data from state, regional, or local agency population projections within the service area of the urban water supplier.

(b) The urban water supplier shall provide that portion of its urban water management plan prepared pursuant to this article to any city or county within which it provides water supplies no later than 60 days after the submission of its urban water management plan.

(c) Nothing in this article is intended to create a right or entitlement to water service or any specific level of water service.

(d) Nothing in this article is intended to change existing law concerning an urban water supplier's obligation to provide water service to its existing customers or to any potential future customers.

*(Amended by Stats. 1996, Ch. 124.)*

### **Article 3. Adoption and Implementation of Plans**

**10640.** Every urban water supplier required to prepare a plan pursuant to this part shall prepare its plan pursuant to Article 2 (commencing with Section 10630).

The supplier shall likewise periodically review the plan as required by Section 10621, and any amendments or changes required as a result of that review shall be adopted pursuant to this article.

**10641.** An urban water supplier required to prepare a plan may consult with, and obtain comments from, any public agency or state agency or any person who has special expertise with respect to water demand management methods and techniques.

*(Amended by Stats. 1995, Ch. 854.)*

**10642.** Each urban water supplier shall encourage the active involvement of diverse social, cultural, and economic elements of the population within the service area prior to and during the preparation of the plan. Prior to adopting a plan, the urban water supplier shall make the plan available for public inspection and shall hold a public hearing thereon. Prior to the hearing, notice of the time and place of hearing shall be published within the jurisdiction of the publicly owned water supplier pursuant to Section 6066 of the Government Code. The urban water supplier shall provide notice of the time and place of hearing to any city or county within which the supplier provides water supplies. A privately owned water supplier shall provide an equivalent notice within its service area. After the hearing, the plan shall be adopted as prepared or as modified after the hearing.

*(Amended by Stats. 1995, Ch. 854 and Stats 2000. Ch. 297.)*

**10643.** An urban water supplier shall implement its plan adopted pursuant to this chapter in accordance with the schedule set forth in its plan.

**10644.** (a) An urban water supplier shall submit to the department, the California State Library, and any city or county within which the supplier provides water supplies a copy of its plan no later than 30 days after adoption. Copies of amendments or changes to the plans shall be submitted to the department, the California State Library, and any city or county within which the supplier provides water supplies within 30 days after adoption.

(b) The department shall prepare and submit to the Legislature, on or before December 31, in the years ending in six and one, a report summarizing the status of the plans adopted pursuant to this part. The report prepared by the department shall identify the exemplary elements of the individual plans. The department shall provide a copy of the report to each urban water supplier that has submitted its plan to the department. The department shall also prepare reports and provide data for any legislative hearings designed to consider the effectiveness of plans submitted pursuant to this part.

(c) (1) For the purpose of identifying the exemplary elements of the individual plans, the department shall identify in the report those water demand management measures adopted and implemented by specific urban water suppliers, and identified pursuant to Section 10631, that achieve water savings significantly above the levels established by the department to meet the requirements of Section 10631.5.

(2) The department shall distribute to the panel convened pursuant to Section 10631.7 the results achieved by the implementation of those water demand management measures described in paragraph (1).

(3) The department shall make available to the public the standard the department will use to identify exemplary water demand management measures.

*(Amended by Stats. 1992, Ch. 711; Amended by Stats. 1995, Ch. 854 and Stats. 2000, Ch. 297; Amended by Stats. 2004, Ch. 497; Amended by Stats. 2007, Ch. 628.)*

**10645.** Not later than 30 days after filing a copy of its plan with the department, the urban water supplier and the department shall make the plan available for public review during normal business hours.

*(Added by Stats. 1990, Ch. 355.)*

#### **CHAPTER 4. MISCELLANEOUS PROVISIONS**

**10650.** Any actions or proceedings to attack, review, set aside, void, or annul the acts or decisions of an urban water supplier on the grounds of noncompliance with this part shall be commenced as follows:

(a) An action or proceeding alleging failure to adopt a plan shall be commenced within 18 months after that adoption is required by this part.

(b) Any action or proceeding alleging that a plan, or action taken pursuant to the plan, does not comply with this part shall be commenced within 90 days after filing of the plan or amendment thereto pursuant to Section 10644 or the taking of that action.

*(Added by Stats. 1983, Ch. 1009; Amended by Stats. 1995, Ch. 854.)*

**10651.** In any action or proceeding to attack, review, set aside, void, or annul a plan, or an action taken pursuant to the plan by an urban water supplier on the grounds of noncompliance with this part, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the supplier has not proceeded in a manner required by law or if the action by the water supplier is not supported by substantial evidence.

*(Added by Stats. 1983, Ch. 1009.)*

**10652.** The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to the preparation and adoption of plans pursuant to this part or to the implementation of actions taken pursuant to Section 10632. Nothing in this part shall be interpreted as exempting from the California Environmental Quality Act any project that would significantly affect water supplies for fish and wildlife, or any project for implementation of the plan, other than projects implementing Section 10632, or any project for expanded or additional water supplies.

*(Added by Stats. 1983, Ch. 1009; Amended by Stats. 1991-92, Ch. 13; Amended by Stats. 1995, Ch. 854.)*

**10653.** The adoption of a plan shall satisfy any requirements of state law, regulation, or order, including those of the State Water Resources Control Board and the Public Utilities Commission, for the preparation of water management plans or conservation plans; provided, that if the State Water Resources Control Board or the Public Utilities Commission requires additional information concerning water conservation to implement its existing authority, nothing in this part shall be deemed to limit the board or the commission in obtaining that information. The requirements of this part shall be satisfied by any urban water demand management

plan prepared to meet federal laws or regulations after the effective date of this part, and which substantially meets the requirements of this part, or by any existing urban water management plan which includes the contents of a plan required under this part.

*(Added by Stats. 1983, Ch. 1009; Amended by Stats. 1995, Ch. 854.)*

**10654.** An urban water supplier may recover in its rates the costs incurred in preparing its plan and implementing the reasonable water conservation measures included in the plan. Any best water management practice that is included in the plan that is identified in the “Memorandum of Understanding Regarding Urban Water Conservation in California” is deemed to be reasonable for the purposes of this section.

*(Amended by Stats. 1994, Ch. 609.)*

**10655.** If any provision of this part or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this part which can be given effect without the invalid provision or application thereof, and to this end the provisions of this part are severable.

*(Added by Stats. 1983, Ch. 1009.)*

**10656.** An urban water supplier that does not prepare, adopt, and submit its urban water management plan to the department in accordance with this part, is ineligible to receive funding pursuant to Division 24 (commencing with Section 78500) or Division 26 (commencing with Section 79000), or receive drought assistance from the state until the urban water management plan is submitted pursuant to this article.

*(Added by Stats. 1991-92, Ch. 13; Amended by Stats. 1995, Ch. 854; Amended by Stats. 2001, Ch. 643.)*

**10657.** (Repealed by Stats. 2001, Ch. 643)

## **PART 2.75. GROUNDWATER MANAGEMENT**

### **CHAPTER 1. GENERAL PROVISIONS**

**10750.** (a) The Legislature finds and declares that groundwater is a valuable natural resource in California, and should be managed to ensure both its safe production and its quality. It is the intent of the Legislature to encourage local agencies to work cooperatively to manage groundwater resources within their jurisdictions.

(b) The Legislature also finds and declares that additional study of groundwater resources is necessary to better understand how to manage groundwater effectively to ensure the safe production, quality, and proper storage of groundwater in this state.

*(Added by Stats. 1992, Ch. 947, Amended by Stats 2000, Ch. 708.)*

**10750.2.** (a) Subject to subdivision (b), this part applies to all groundwater basins in the state.

(b) This part does not apply to any portion of a groundwater basin that is subject to groundwater management by a local agency or a watermaster pursuant to other provisions of law or a court order, judgment, or decree, unless the local agency or watermaster agrees to the application of this part.

*(Added by Stats. 1992, Ch. 947.)*

**10750.4.** Nothing in this part requires a local agency overlying a groundwater basin to adopt or implement a groundwater management plan or groundwater management program pursuant to this part.

*(Added by Stats. 1992, Ch. 947.)*

**10750.6.** Nothing in this part affects the authority of a local agency or a watermaster to manage groundwater pursuant to other provisions of law or a court order, judgment, or decree.

*(Added by Stats. 1992, Ch. 947.)*

**10750.7.** (a) A local agency may not manage groundwater pursuant to this part within the service area of another local agency, a water corporation regulated by the Public Utilities Commission, or a mutual water company without the agreement of that other entity.

(b) This section applies only to groundwater basins that are not critically overdrafted.

*(Added by Stats. 1992, Ch. 947.)*

**10750.8.** (a) A local agency may not manage groundwater pursuant to this part within the service area of another local agency without the agreement of that other entity.

(b) This section applies only to groundwater basins that are critically overdrafted.

*(Added by Stats. 1992, Ch. 947.)*

**10750.9.** (a) A local agency that commences procedures, prior to January 1, 1993, to adopt an ordinance or resolution to establish a program for the management of groundwater pursuant to Part 2.75 (commencing with Section 10750), as added by Chapter 903 of the Statutes of 1991, may proceed to adopt the ordinance or resolution pursuant to Part 2.75, and the completion of those procedures is deemed to meet the requirements of this part.

(b) A local agency that has adopted an ordinance or resolution pursuant to Part 2.75 (commencing with Section 10750), as added by Chapter 903 of the Statutes of 1991, may amend its groundwater management program by ordinance or resolution of the governing body of the local agency to include any of the plan components set forth in Section 10753.7.

*(Added by Stats. 1992, Ch. 947; Amended by Stats. 1993, Ch. 320.)*

**10750.10.** This part is in addition to, and not a limitation on, the authority granted to a local agency pursuant to other provisions of law.

*(Added by Stats. 1992, Ch. 947.)*

**10751.** (Repealed by Stats. 1992, Ch. 947.)

## **CHAPTER 2. DEFINITIONS**

**10752.** Unless the context otherwise requires, the following definitions govern the construction of this part:

(a) “Groundwater” means all water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water that flows in known and definite channels.

(b) “Groundwater basin” means any basin or subbasin identified in the department’s Bulletin No. 118, dated September 1975, and any amendments to that bulletin, but does not include a basin in which the average well yield, excluding domestic wells that supply water to a single-unit dwelling, is less than 100 gallons per minute.

(c) “Groundwater extraction facility” means a device or method for the extraction of groundwater within a groundwater basin.

(d) “Groundwater management plan” or “plan” means a document that describes the activities intended to be included in a groundwater management program.

(e) “Groundwater management program” or “program” means a coordinated and ongoing activity undertaken for the benefit of a groundwater basin, or a portion of a groundwater basin, pursuant to a groundwater management plan adopted pursuant to this part.

(f) “Groundwater recharge” means the augmentation of groundwater, by natural or artificial means, with surface water or recycled water.

(g) “Local agency” means any local public agency that provides water service to all or a portion of its service area, and includes a joint powers authority formed by local public agencies that provide water service.

(h) “Person” has the same meaning as defined in Section 19.

(i) “Recharge area” means the area that supplies water to an aquifer in a groundwater basin and includes multiple wellhead protection areas.

(j) “Watermaster” means a watermaster appointed by a court or pursuant to other provisions of law.

(k) “Wellhead protection area” means the surface and subsurface area surrounding a water well or well field that supplies a public water system through which contaminants are reasonably likely to migrate toward the water well or well field.

*(Added by Stats. 1992, Ch. 947; Amended by Stats. 1993, Ch. 320 and Stats. 1999, Ch. 779; Amended by Stats. 2011 Ch. 572.)*

## **CHAPTER 3. GROUNDWATER MANAGEMENT PLANS**

**10753.** (a) Any local agency, whose service area includes a groundwater basin, or a portion of a groundwater basin, that is not subject to groundwater management pursuant to other provisions of law or a court order, judgment, or decree, may, by ordinance, or by resolution if the local agency is not authorized to act by ordinance,

adopt and implement a groundwater management plan pursuant to this part within all or a portion of its service area.

(b) Notwithstanding subdivision (a), a local public agency, other than an agency defined in subdivision (g) of Section 10752, that provides flood control, groundwater management, or groundwater replenishment, or a local agency formed pursuant to this code for the principal purpose of providing water service that has not yet provided that service, may exercise the authority of this part within a groundwater basin that is located within its boundaries within areas that are either of the following:

(1) Not served by a local agency.

(2) Served by a local agency whose governing body, by a majority vote, declines to exercise the authority of this part and enters into an agreement with the local public agency pursuant to Section 10750.7 or 10750.8.

(c) Except as provided in subdivision (b), this chapter does not authorize a local agency with authority to manage groundwater planning within the service area of another local agency.

(d) Except as otherwise provided in this part, the process for developing and adopting a revised groundwater management plan shall be the same as the process for developing and adopting a new groundwater management plan.

*(Added by Stats. 1992, Ch. 947; Amended by Stats. 1993, Ch. 320; Amended by Stats. 2011, Ch. 572.)*

**10753.1.** Nothing in this part, or in any groundwater management plan adopted pursuant to this part, affects surface water rights or the procedures under common law or local groundwater authority, or any provision of law other than this part that determines or grants surface water rights.

*(Added by Stats. 2002, Ch. 603.)*

**10753.2.** (a) Prior to adopting a resolution of intention to draft a groundwater management plan, a local agency shall hold a hearing, after publication of notice pursuant to Section 6066 of the Government Code, on whether or not to adopt a resolution of intention to draft a groundwater management plan pursuant to this part for the purposes of implementing the plan and establishing a groundwater management program.

(b) At the conclusion of the hearing, the local agency may draft a resolution of intention to adopt a groundwater management plan pursuant to this part for the purposes of implementing the plan and establishing a groundwater management program.

(c) The local agency shall provide to the department a copy of a resolution of intention adopted pursuant to this section within 30 days of the date of adoption. The local agency shall also provide to the department contact information for the person in charge of drafting the groundwater management plan.

(d) The department shall post on its Internet Web site information it possesses regarding groundwater management plans being prepared or adopted pursuant to this part, including information provided by local agencies identified pursuant to this section, and monitoring entities identified pursuant to Sections 10928 and 10930.

*(Added by Stats. 1992, Ch. 947; Amended by Stats. 2011, Ch. 572.)*

**10753.3.** (a) After the conclusion of the hearing, and if the local agency adopts a resolution of intention, the local agency shall publish the resolution of intention in the same manner that notice for the hearing held under Section 10753.2 was published.

(b) Upon written request, the local agency shall provide any interested person with a copy of the resolution of intention.

*(Added by Stats. 1992, Ch. 947.)*

**10753.4.** (a) The local agency shall prepare a groundwater management plan within two years of the date of the adoption of the resolution of intention.

(1) If the plan is not adopted within two years, the resolution of intention expires, and a plan shall not be adopted except pursuant to a new resolution of intention adopted in accordance with this chapter.

(2) If the plan is not adopted within two years, and the local agency was operating under a previously adopted groundwater management plan, that previous plan shall remain in effect.

(b) For the purposes of carrying out this part, the local agency shall make available to the public and the department a written statement describing the manner in which interested parties may participate in developing the groundwater management plan. The local agency may appoint, and consult with, a technical advisory committee consisting of interested parties for the purposes of carrying out this part.

(c) The local agency shall establish and maintain a list of persons interested in receiving notices regarding plan preparation, meeting announcements, and availability of draft plans, maps, and other relevant documents. Any person may request, in writing, to be placed on the list of interested persons.

*(Added by Stats. 1992, Ch. 947; Amended by Stats.2002, Ch. 603; Amended by Stats. 2011, 572.)*

**10753.5.** (a) After a groundwater management plan is prepared, the local agency shall hold a second hearing to determine whether to adopt the plan. Notice of the hearing shall be given pursuant to Section 6066 of the Government Code. Notice shall also be provided to the department and to all persons on the list established and maintained pursuant to subdivision (c) of Section 10753.4. The notice shall include a summary of the plan and shall state that copies of the plan and any maps that may be prepared pursuant to this part may be obtained for the cost of reproduction at the office of the local agency.

(b) At the second hearing, the local agency shall consider protests to the adoption of the plan. At any time prior to the conclusion of the second hearing, any landowner within the local agency may file a written protest or withdraw a protest previously filed.

*(Added by Stats. 1992, Ch. 947; Amended by Stats. 2011, Ch. 572.)*

**10753.6.** (a) A written protest filed by a landowner shall include the landowner's signature and a description of the land owned sufficient to identify the land. A public agency owning land is deemed to be a landowner for the purpose of making a written protest.

(b) The secretary of the local agency shall compare the names and property descriptions on the protest against the property ownership records of the county assessors.

(c) (1) A majority protest shall be determined to exist if the governing board of the local agency finds that the protest filed and not withdrawn prior to the conclusion of the second hearing represent more than 50 percent of the assessed value of the land within the local agency subject to groundwater management pursuant to this part.

(2) If the local agency determines that a majority protest exists, the groundwater plan may not be adopted and the local agency shall not consider adopting a plan for the area proposed to be included within the program for a period of one year after the date of the second hearing.

(3) If a majority protest has not been filed, the local agency, within 35 days after the conclusion of the second hearing, may adopt the groundwater management plan.

*(Added by Stats. 1992, Ch. 947.)*

**10753.7.** (a) For the purposes of qualifying as a groundwater management plan under this section, a plan shall contain the components that are set forth in this section. In addition to the requirements of a specific funding program, a local agency seeking state funds administered by the department for groundwater projects or groundwater quality projects, including projects that are part of an integrated regional water management program or plan, and excluding programs that are funded under Part 2.78 (commencing with Section 10795), shall do all of the following:

(1) Prepare and implement a groundwater management plan that includes basin management objectives for the groundwater basin that is subject to the plan. The plan shall include components relating to the monitoring and management of groundwater levels within the groundwater basin, groundwater quality degradation, inelastic land surface subsidence, changes in surface flow and surface water quality that directly affect groundwater levels or quality or are caused by groundwater pumping in the basin, and a description of how recharge areas identified in the plan substantially contribute to the replenishment of the groundwater basin.

(2) For purposes of implementing paragraph (1), the local agency shall prepare a plan to involve other agencies that enables the local agency to work cooperatively with other public entities whose service area or boundary overlies the groundwater basin.

(3) For purposes of implementing paragraph (1), the local agency shall prepare a map that details the area of the groundwater basin, as defined in the department's Bulletin No. 118, and the area of the local agency, that will be subject to the plan, as well as the boundaries of other local agencies that overlie the basin in which the agency is developing a groundwater management plan.

(4) (A) Commencing January 1, 2013, for purposes of implementing paragraph (1), the groundwater management plan shall include a map identifying the recharge areas for the groundwater basin.

(B) The local agency shall provide the map required pursuant to subparagraph (A) to the appropriate local planning agencies after adoption of the groundwater management plan.

(C) Upon submitting a map pursuant to subparagraph (B), the local agency shall notify the department and all persons on the list established and maintained pursuant to subdivision (c) of Section 10753.4.

(D) For purposes of this paragraph, "map identifying the recharge areas" means a map that identifies, or maps that identify, the current recharge areas that substantially contribute to the replenishment of the groundwater basin.

(5) The local agency shall adopt monitoring protocols that are designed to detect changes in groundwater levels, groundwater quality, inelastic surface subsidence for basins for which subsidence has been identified as a potential problem, and flow and quality of surface water that directly affect groundwater levels or quality or are caused by groundwater pumping in the basin. The monitoring protocols shall be designed to generate information that promotes efficient and effective groundwater management.

(6) Local agencies that are located in areas outside the groundwater basins delineated on the latest edition of the department's groundwater basin and subbasin map shall prepare groundwater management plans incorporating the components in this subdivision, and shall use geologic and hydrologic principles appropriate to those areas.

(b) (1) (A) A local agency may receive state funds administered by the department for groundwater projects or for other projects that directly affect groundwater levels or quality if it prepares and implements, participates in, or consents to be subject to, a groundwater management plan, a basinwide management plan, or other integrated regional water management program or plan that meets, or is in the process of meeting, the requirements of subdivision (a). A local agency with an existing groundwater management plan that meets the requirements of subdivision (a), or a local agency that completes an update of its plan to meet the requirements of subdivision (a) within one year of applying for funds, shall be given priority consideration for state funds administered by the department over local agencies that are in the process of developing a groundwater management plan. The department shall withhold funds from the project until the update of the groundwater management plan is complete.

(B) Notwithstanding subparagraph (A), a local agency that manages groundwater under any other provision of existing law that meets the requirements of subdivision (a), or that completes an update of its plan to meet the requirements of subdivision (a) within one year of applying for funding, shall be eligible for funding administered by the department. The department shall withhold funds from a project until the update of the groundwater management plan is complete.

(C) Notwithstanding subparagraph (A), a local agency that conforms to the requirements of an adjudication of water rights in the groundwater basin is in compliance with subdivision (a). For purposes of this subparagraph, an "adjudication" includes an adjudication under Section 2101, an administrative adjudication, and an adjudication in state or federal court.

(D) Subparagraphs (A) and (B) do not apply to proposals for funding under Part 2.78 (commencing with Section 10795), or to funds authorized or appropriated prior to September 1, 2002.

(E) A local agency may request state funds to map groundwater recharge areas pursuant to paragraph (4) of subdivision (a) to the extent that the request for

state funds is consistent with eligibility requirements that are applicable to the use of the requested funds.

(2) Upon the adoption of a groundwater management plan in accordance with this part, the local agency shall submit a copy of the plan to the department, in an electronic format, if practicable, approved by the department. The department shall make available to the public copies of the plan received pursuant to this part.

*(Added by Stats.2002, Ch. 603; Amended by Stats. 2004, Ch. 497; Amended by Stats. 2011, Ch.572)*

**10753.8.** A groundwater management plan may include components relating to all of the following:

- (a) The control of saline water intrusion.
- (b) Identification and management of wellhead protection areas and recharge areas.
- (c) Regulation of the migration of contaminated groundwater.
- (d) The administration of a well abandonment and well destruction program.
- (e) Mitigation of conditions of overdraft.
- (f) Replenishment of groundwater extracted by water producers.
- (g) Monitoring of groundwater levels and storage.
- (h) Facilitating conjunctive use operations.
- (i) Identification of well construction policies.
- (j) The construction and operation by the local agency of groundwater contamination cleanup, recharge, storage, conservation, water recycling, and extraction projects.
- (k) The development of relationships with state and federal regulatory agencies.
- (l) The review of land use plans and coordination with land use planning agencies to assess activities which create a reasonable risk of groundwater contamination.

*(Added by Stats. 1992, Ch. 947; Renumbered 10753.8 & Amended by Stats.2002, Ch. 603.)*

**10753.9.** (a) A local agency shall adopt rules and regulations to implement and enforce a groundwater management plan adopted pursuant to this part.

(b) Nothing in this part shall be construed as authorizing the local agency to make a binding determination of the water rights of any person or entity.

(c) Nothing in this part shall be construed as authorizing the local agency to limit or suspend extractions unless the local agency has determined through study and investigation that groundwater replenishment programs or other alternative sources of water supply have proved insufficient or infeasible to lessen the demand for groundwater.

*(Added by Stats. 1992, Ch. 947; Renumbered 10753.9 & Amended by Stats.2002, Ch. 603.)*

**10753.10** In adopting rules and regulations pursuant to Section 10753.9, the local agency shall consider the potential impact of those rules and regulations on business activities, including agricultural operations, and to the extent practicable and

consistent with the protection of the groundwater resources, minimize any adverse impacts on those business activities.

*(Added by Stats. 1992, Ch. 947; Renumbered 10753.10 & Amended by Stats.2002, Ch. 603.)*

**10753.11.** A plan shall not be considered invalid, and the local agency shall not be required to recirculate the plan for public comment or to delay implementation of the plan, if the local agency substantially complies with the public notice provisions of this chapter.

*(Added by Stats.2011, Ch.572.)*

#### CHAPTER 4. FINANCES

**10754.** For purposes of groundwater management, a local agency that adopts a groundwater management plan pursuant to this part has the authority of a water replenishment district pursuant to Part 4 (commencing with Section 60220) of Division 18 and may fix and collect fees and assessments for groundwater management in accordance with Part 6 (commencing with Section 60300) of Division 18.

*(Added by Stats. 1992, Ch. 947.)*

**10754.2.** (a) Subject to Section 10754.3, except as specified in subdivision (b), a local agency that adopts a groundwater management plan pursuant to this part, may impose equitable annual fees and assessments for groundwater management based on the amount of groundwater extracted from the groundwater basin within the area included in the groundwater management plan to pay for costs incurred by the local agency for groundwater management, including, but not limited to, the costs associated with the acquisition of replenishment water, administrative and operating costs, and costs of construction of capital facilities necessary to implement the groundwater management plan.

(b) The local agency may not impose fees or assessments on the extraction and replacement of groundwater pursuant to a groundwater remediation program required by other provisions of law or a groundwater storage contract with the local agency.

*(Added by Stats. 1992, Ch. 947; Amended by Stats. 1993, Ch. 320.)*

**10754.3.** Before a local agency may levy a water management assessment pursuant to Section 10754.2 or otherwise fix and collect fees for the replenishment or extraction of groundwater pursuant to this part, the local agency shall hold an election on the proposition of whether or not the local agency shall be authorized to levy a groundwater management assessment or fix and collect fees for the replenishment or extraction of groundwater. The local agency shall be so authorized if a majority of the votes cast at the election is in favor of the proposition. The election shall be conducted in the manner prescribed by the laws applicable to the local agency or, if there are no laws so applicable, then as prescribed by laws relating to local elections. The election shall be conducted only within the portion of the jurisdiction of the local agency subject to groundwater management pursuant to this part.

*(Added by Stats. 1992, Ch. 947.)*

**CHAPTER 5.**  
**MISCELLANEOUS**

**10755.** (a) If a local agency annexes land subject to a groundwater management plan adopted pursuant to this part, the local agency annexing the land shall comply with the groundwater management plan for the annexed property.

(b) If a local agency subject to groundwater management plan adopted pursuant to this part annexes land not subject to a groundwater management plan adopted pursuant to this part at the time of annexation, the annexed territory shall be subject to the groundwater management plan of the local agency annexing the land.

*(Added by Stats. 1992, Ch. 947.)*

**10755.2.** (a) It is the intent of the Legislature to encourage local agencies, within the same groundwater basin, that are authorized to adopt groundwater management plans pursuant to this part, to adopt and implement a coordinated groundwater management plan.

(b) For the purpose of adopting and implementing a coordinated groundwater management program pursuant to this part, a local agency may enter into a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code with public agencies, or a memorandum of understanding with public or private entities providing water service.

(c) A local agency may enter into agreements with public entities or private parties for the purpose of implementing a coordinated groundwater management plan.

*(Added by Stats. 1992, Ch. 947; Amended by Stats. 1993, Ch. 320.)*

**10755.3.** Local agencies within the same groundwater basin that conduct groundwater management programs within that basin pursuant to this part, and cities and counties that either manage groundwater pursuant to this part or have ordinances relating to groundwater within that basin, shall, at least annually, meet to coordinate those programs.

*(Added by Stats. 1992, Ch. 947; Amended by Stats. 1995, Ch. 833.)*

**10755.4.** Except in those groundwater basins that are subject to critical conditions of groundwater overdraft, as identified in the department's Bulletin 118-80, revised on December 24, 1982, the requirements of a groundwater management plan that is implemented pursuant to this part do not apply to the extraction of groundwater by means of a groundwater extraction facility that is used to provide water for domestic purposes to a single-unit residence and, if applicable, any dwelling unit authorized to be constructed pursuant to Section 65852.1 or 65852.2 of the Government Code.

*(Added by Stats. 1992, Ch. 947.)*

**10756.** (Repealed by Stats.2001, Ch. 745.)

**10757-10767.** (Repealed by Stats. 1992, Ch. 947.)

**PART 2.78.**  
**LOCAL GROUNDWATER MANAGEMENT**  
**ASSISTANCE ACT OF 2000**  
*(Added by Stats. 2000, Ch. 708.)*

**10795.** This part shall be known and may be cited as the Local Groundwater Management Assistance Act of 2000.

**10795.2.** There is hereby created the Local Groundwater Assistance Fund which shall be administered by the department.

**10795.4.** Upon appropriation by the Legislature, the money in the fund may be used by the department to assist local public agencies by awarding grants to those agencies to conduct groundwater studies or to carry out groundwater monitoring and management activities in accordance with Part 2.75 (commencing with Section 10750) or other authority pursuant to which local public agencies manage groundwater resources, or both, including the development of groundwater management plans, as provided for in subdivision (a) of Section 10753.7.

*(Amended by Stats. 2002, Ch. 603.)*

**10795.6.** The department, in making grants pursuant to this part, shall do both of the following:

(a) Award grants based on the recommendations submitted by the Technical Advisory Panel. The panel shall give priority to a local public agency that has adopted a groundwater management plan and submitted an application that demonstrates collaboration by that local public agency with other local public agencies with regard to the management of the affected groundwater basin.

(b) Ensure that the money in the fund is allocated in a geographically balanced manner among the regions of the state that are capable of, and interested in, implementing groundwater management programs.

**10795.8.** The department may enter into contracts and may adopt regulations subject to the advice and review of the Technical Advisory Panel, to carry out this part. Any grant contract entered into pursuant to this part may include provisions that the department determines are necessary.

**10795.10.** An application for a grant under this part shall be made to the department in the form and with the supporting materials prescribed by the department.

**10795.12.** (a) A Technical Advisory Panel shall review applications for grants based on criteria developed by the panel.

(b) The Technical Advisory Panel shall review applications and indicate whether, in its opinion, an application should be given priority pursuant to subdivisions (a) and (b) of Section 10795.6, and may place conditions on its recommendation for the funding of a specific project. These conditions may include requirements for additional clarification or further explanation of certain aspects of the project.

**10795.14.** (a) The Technical Advisory Panel shall be comprised of individuals appointed by the Secretary of the Resources Agency.

(b) (1) Panelists shall have background experience, or general knowledge, in the area of groundwater resources.

(2) Panelists shall include all of the following:

(A) At least three individuals who currently serve on the board of directors of a local public agency that has adopted a groundwater management plan.

(B) A licensed civil engineer.

(C) A licensed geologist.

(D) A licensed hydrogeologist.

(E) At least one individual representing each of the hydrologic study areas shown in Figure 3 of the department's Bulletin 118-80, entitled "Ground Water Basins in California: A Report to the Legislature in Response to Water Code Section 12924."

(c) The number of individuals serving on the Technical Advisory Panel shall be determined by the Secretary of the Resources Agency.

**10795.16.** (a) If a member of the Technical Advisory Panel, or a member of his or her immediate family, is employed by a grant applicant, the employer of a grant applicant, or a consultant or independent contractor employed by a grant applicant, the panel member shall make that disclosure to the other members of the panel and shall not participate in the review of the grant application of that applicant.

(b) The Technical Advisory Panel shall operate on principles of collaboration. Panelists shall be appointed who are committed to working together with other interests for the long-term benefit of California groundwater resources and the people who rely on those resources.

(c) Panelists shall be residents of the state and have an interest in the preservation, protection, and enhancement of the state's groundwater resources.

(d) Panelists shall not be employees of any state or federal agency.

**10795.19.** A local public agency receiving a grant under this part shall submit to the department copies of all data collected pursuant to the grant.

**10795.20.** Federal funds may be used for the purposes of this part.

## PART 2.8

### AGRICULTURAL WATER MANAGEMENT PLANNING

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 4) \**

*\* Repeals the former Part 2.8, Added by Stats. 1986, Ch. 954*

**10800.** This part shall be known and may be cited as the Agricultural Water Management Planning Act.

**10801.** The Legislature finds and declares all of the following:

(a) The waters of the state are a limited and renewable resource.

(b) The California Constitution requires that water in the state be used in a reasonable and beneficial manner.

(c) Urban water districts are required to adopt water management plans.

(d) The conservation of agricultural water supplies is of great statewide concern.

(e) There is a great amount of reuse of delivered water, both inside and outside the water service areas.

(f) Significant noncrop beneficial uses are associated with agricultural water use, including streamflows and wildlife habitat.

(g) Significant opportunities exist in some areas, through improved irrigation water management, to conserve water or to reduce the quantity of highly saline or toxic drainage water.

(h) Changes in water management practices should be carefully planned and implemented to minimize adverse effects on other beneficial uses currently being served.

(i) Agricultural water suppliers that receive water from the federal Central Valley Project are required by federal law to prepare and implement water conservation plans.

(j) Agricultural water users applying for a permit to appropriate water from the board are required to prepare and implement water conservation plans.

**10802.** The Legislature finds and declares that all of the following are the policies of the state:

(a) The conservation of water shall be pursued actively to protect both the people of the state and the state's water resources.

(b) The conservation of agricultural water supplies shall be an important criterion in public decisions with regard to water.

(c) Agricultural water suppliers shall be required to prepare water management plans to achieve conservation of water.

**10810.** Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this part.

**10811.** "Agricultural water management plan" or "plan" means an agricultural water management plan prepared pursuant to this part.

**10812.** "Agricultural water supplier" has the same meaning as defined in Section 10608.12.

**10813.** "Customer" means a purchaser of water from a water supplier who uses water for agricultural purposes.

**10814.** "Person" means any individual, firm, association, organization, partnership, business, trust, corporation, company, public agency, or any agency of that entity.

**10815.** "Public agency" means any city, county, city and county, special district, or other public entity.

**10816.** "Urban water supplier" has the same meaning as set forth in Section 10617.

**10817.** “Water conservation” means the efficient management of water resources for beneficial uses, preventing waste, or accomplishing additional benefits with the same amount of water.

**10820.** (a) An agricultural water supplier shall prepare and adopt an agricultural water management plan in the manner set forth in this chapter on or before December 31, 2012, and shall update that plan on December 31, 2015, and on or before December 31 every five years thereafter.

(b) Every supplier that becomes an agricultural water supplier after December 31, 2012, shall prepare and adopt an agricultural water management plan within one year after the date it has become an agricultural water supplier.

(c) A water supplier that indirectly provides water to customers for agricultural purposes shall not prepare a plan pursuant to this part without the consent of each agricultural water supplier that directly provides that water to its customers.

**10821.** (a) An agricultural water supplier required to prepare a plan pursuant to this part shall notify each city or county within which the supplier provides water supplies that the agricultural water supplier will be preparing the plan or reviewing the plan and considering amendments or changes to the plan. The agricultural water supplier may consult with, and obtain comments from, each city or county that receives notice pursuant to this subdivision.

(b) The amendments to, or changes in, the plan shall be adopted and submitted in the manner set forth in Article 3 (commencing with Section 10840).

**10825.** (a) It is the intent of the Legislature in enacting this part to allow levels of water management planning commensurate with the numbers of customers served and the volume of water supplied.

(b) This part does not require the implementation of water conservation programs or practices that are not locally cost effective.

**10826.** An agricultural water management plan shall be adopted in accordance with this chapter. The plan shall do all of the following:

(a) Describe the agricultural water supplier and the service area, including all of the following:

- (1) Size of the service area.
- (2) Location of the service area and its water management facilities.
- (3) Terrain and soils.
- (4) Climate.
- (5) Operating rules and regulations.
- (6) Water delivery measurements or calculations.
- (7) Water rate schedules and billing.
- (8) Water shortage allocation policies.

(b) Describe the quantity and quality of water resources of the agricultural water supplier, including all of the following:

- (1) Surface water supply.
- (2) Groundwater supply.

- (3) Other water supplies.
- (4) Source water quality monitoring practices.
- (5) Water uses within the agricultural water supplier's service area, including all of the following:
  - (A) Agricultural.
  - (B) Environmental.
  - (C) Recreational.
  - (D) Municipal and industrial.
  - (E) Groundwater recharge.
  - (F) Transfers and exchanges.
  - (G) Other water uses.
- (6) Drainage from the water supplier's service area.
- (7) Water accounting, including all of the following:
  - (A) Quantifying the water supplier's water supplies.
  - (B) Tabulating water uses.
  - (C) Overall water budget.
- (8) Water supply reliability.
- (c) Include an analysis, based on available information, of the effect of climate change on future water supplies.
- (d) Describe previous water management activities.
- (e) Include in the plan the water use efficiency information required pursuant to Section 10608.48.

**10827.** Agricultural water suppliers that are members of the Agricultural Water Management Council, and that submit water management plans to that council in accordance with the "Memorandum of Understanding Regarding Efficient Water Management Practices By Agricultural Water Suppliers In California," dated January 1, 1999, may submit the water management plans identifying water demand management measures currently being implemented, or scheduled for implementation, to satisfy the requirements of Section 10826.

**10828.** (a) Agricultural water suppliers that are required to submit water conservation plans to the United States Bureau of Reclamation pursuant to either the Central Valley Project Improvement Act (Public Law 102-575) or the Reclamation Reform Act of 1982, or both, may submit those water conservation plans to satisfy the requirements of Section 10826, if both of the following apply:

(1) The agricultural water supplier has adopted and submitted the water conservation plan to the United States Bureau of Reclamation within the previous four years.

(2) The United States Bureau of Reclamation has accepted the water conservation plan as adequate.

(b) This part does not require agricultural water suppliers that are required to submit water conservation plans to the United States Bureau of Reclamation pursuant to either the Central Valley Project Improvement Act (Public Law 102-575) or the Reclamation Reform Act of 1982, or both, to prepare and adopt water conservation plans according to a schedule that is different from that required by the United States Bureau of Reclamation.

**10829.** An agricultural water supplier may satisfy the requirements of this part by adopting an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) or by participation in areawide, regional, watershed, or basinwide water management planning if those plans meet or exceed the requirements of this part.

**10840.** Every agricultural water supplier shall prepare its plan pursuant to Article 2 (commencing with Section 10825).

**10841.** Prior to adopting a plan, the agricultural water supplier shall make the proposed plan available for public inspection, and shall hold a public hearing on the plan. Prior to the hearing, notice of the time and place of hearing shall be published within the jurisdiction of the publicly owned agricultural water supplier pursuant to Section 6066 of the Government Code. A privately owned agricultural water supplier shall provide an equivalent notice within its service area and shall provide a reasonably equivalent opportunity that would otherwise be afforded through a public hearing process for interested parties to provide input on the plan. After the hearing, the plan shall be adopted as prepared or as modified during or after the hearing.

**10842.** An agricultural water supplier shall implement the plan adopted pursuant to this chapter in accordance with the schedule set forth in its plan, as determined by the governing body of the agricultural water supplier.

**10843.** (a) An agricultural water supplier shall submit to the entities identified in subdivision (b) a copy of its plan no later than 30 days after the adoption of the plan. Copies of amendments or changes to the plans shall be submitted to the entities identified in subdivision (b) within 30 days after the adoption of the amendments or changes.

(b) An agricultural water supplier shall submit a copy of its plan and amendments or changes to the plan to each of the following entities:

- (1) The department.
- (2) Any city, county, or city and county within which the agricultural water supplier provides water supplies.
- (3) Any groundwater management entity within which jurisdiction the agricultural water supplier extracts or provides water supplies.
- (4) Any urban water supplier within which jurisdiction the agricultural water supplier provides water supplies.
- (5) Any city or county library within which jurisdiction the agricultural water supplier provides water supplies.
- (6) The California State Library.
- (7) Any local agency formation commission serving a county within which the agricultural water supplier provides water supplies.

**10844.** (a) Not later than 30 days after the date of adopting its plan, the agricultural water supplier shall make the plan available for public review on the agricultural water supplier's Internet Web site.

(b) An agricultural water supplier that does not have an Internet Web

site shall submit to the department, not later than 30 days after the date of adopting its plan, a copy of the adopted plan in an electronic format. The department shall make the plan available for public review on the department's Internet Web site.

**10845.** (a) The department shall prepare and submit to the Legislature, on or before December 31, 2013, and thereafter in the years ending in six and years ending in one, a report summarizing the status of the plans adopted pursuant to this part.

(b) The report prepared by the department shall identify the outstanding elements of any plan adopted pursuant to this part. The report shall include an evaluation of the effectiveness of this part in promoting efficient agricultural water management practices and recommendations relating to proposed changes to this part, as appropriate.

(c) The department shall provide a copy of the report to each agricultural water supplier that has submitted its plan to the department. The department shall also prepare reports and provide data for any legislative hearing designed to consider the effectiveness of plans submitted pursuant to this part.

(d) This section does not authorize the department, in preparing the report, to approve, disapprove, or critique individual plans submitted pursuant to this part.

**10850.** (a) Any action or proceeding to attack, review, set aside, void, or annul the acts or decisions of an agricultural water supplier on the grounds of noncompliance with this part shall be commenced as follows:

(1) An action or proceeding alleging failure to adopt a plan shall be commenced within 18 months after that adoption is required by this part.

(2) Any action or proceeding alleging that a plan, or action taken pursuant to the plan, does not comply with this part shall be commenced within 120 days after submitting the plan or amendments to the plan to entities in accordance with Section 10844 or the taking of that action.

(b) In an action or proceeding to attack, review, set aside, void, or annul a plan, or an action taken pursuant to the plan by an agricultural water supplier, on the grounds of noncompliance with this part, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agricultural water supplier has not proceeded in a manner required by law, or if the action by the agricultural water supplier is not supported by substantial evidence.

**10851.** The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to the preparation and adoption of plans pursuant to this part. This part does not exempt projects for implementation of the plan or for expanded or additional water supplies from the California Environmental Quality Act.

**10852.** An agricultural water supplier is not eligible for a water grant or loan awarded or administered by the state unless the supplier complies with this part.

**PART 2.10.**  
**WATER SUPPLY PLANNING TO SUPPORT**  
**EXISTING AND PLANNED FUTURE USES**

**10910.** (a) Any city or county that determines that a project, as defined in Section 10912, is subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) under Section 21080 of the Public Resources Code shall comply with this part.

(b) The city or county, at the time that it determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration is required for any project subject to the California Environmental Quality Act pursuant to Section 21080.1 of the Public Resources Code, shall identify any water system that is, or may become as a result of supplying water to the project identified pursuant to this subdivision, a public water system, as defined in Section 10912, that may supply water for the project. If the city or county is not able to identify any public water system that may supply water for the project, the city or county shall prepare the water assessment required by this part after consulting with any entity serving domestic water supplies whose service area includes the project site, the local agency formation commission, and any public water system adjacent to the project site.

(c) (1) The city or county, at the time it makes the determination required under Section 21080.1 of the Public Resources Code, shall request each public water system identified pursuant to subdivision (b) to determine whether the projected water demand associated with a proposed project was included as part of the most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with Section 10610).

(2) If the projected water demand associated with the proposed project was accounted for in the most recently adopted urban water management plan, the public water system may incorporate the requested information from the urban water management plan in preparing the elements of the assessment required to comply with subdivisions (d), (e), (f), and (g).

(3) If the projected water demand associated with the proposed project was not accounted for in the most recently adopted urban water management plan, or the public water system has no urban water management plan, the water supply assessment for the project shall include a discussion with regard to whether the public water system's total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the projected water demand associated with the proposed project, in addition to the public water system's existing and planned future uses, including agricultural and manufacturing uses.

(4) If the city or county is required to comply with this part pursuant to subdivision (b), the water supply assessment for the project shall include a discussion with regard to whether the total projected water supplies, determined to be available by the city or county for the project during normal, single dry, and multiple dry water years during a 20-year projection, will meet the projected water demand associated with the proposed project, in addition to existing and planned future uses, including agricultural and manufacturing uses.

(d) (1) The assessment required by this section shall include an identification of any existing water supply entitlements, water rights, or water service contracts relevant to the identified water supply for the proposed project, and a description of the quantities of water received in prior years by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), under the existing water supply entitlements, water rights, or water service contracts.

(2) An identification of existing water supply entitlements, water rights, or water service contracts held by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), shall be demonstrated by providing information related to all of the following:

(A) Written contracts or other proof of entitlement to an identified water supply.

(B) Copies of a capital outlay program for financing the delivery of a water supply that has been adopted by the public water system.

(C) Federal, state, and local permits for construction of necessary infrastructure associated with delivering the water supply.

(D) Any necessary regulatory approvals that are required in order to be able to convey or deliver the water supply.

(e) If no water has been received in prior years by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), under the existing water supply entitlements, water rights, or water service contracts, the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), shall also include in its water supply assessment pursuant to subdivision (c), an identification of the other public water systems or water service contractholders that receive a water supply or have existing water supply entitlements, water rights, or water service contracts, to the same source of water as the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), has identified as a source of water supply within its water supply assessments.

(f) If a water supply for a proposed project includes groundwater, the following additional information shall be included in the water supply assessment:

(1) A review of any information contained in the urban water management plan relevant to the identified water supply for the proposed project.

(2) A description of any groundwater basin or basins from which the proposed project will be supplied. For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), has the legal right to pump under the order or decree. For basins that have not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current bulletin of the department that characterizes the condition of the groundwater basin, and a detailed description by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), of the efforts being undertaken in the basin or basins to eliminate the long-term overdraft condition.

(3) A detailed description and analysis of the amount and location of groundwater pumped by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), for the past five years from any groundwater basin from which the proposed project will be supplied. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(4) A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), from any basin from which the proposed project will be supplied. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(5) An analysis of the sufficiency of the groundwater from the basin or basins from which the proposed project will be supplied to meet the projected water demand associated with the proposed project. A water supply assessment shall not be required to include the information required by this paragraph if the public water system determines, as part of the review required by paragraph (1), that the sufficiency of groundwater necessary to meet the initial and projected water demand associated with the project was addressed in the description and analysis required by paragraph (4) of subdivision (b) of Section 10631.

(g) (1) Subject to paragraph (2), the governing body of each public water system shall submit the assessment to the city or county not later than 90 days from the date on which the request was received. The governing body of each public water system, or the city or county if either is required to comply with this act pursuant to subdivision (b), shall approve the assessment prepared pursuant to this section at a regular or special meeting.

(2) Prior to the expiration of the 90-day period, if the public water system intends to request an extension of time to prepare and adopt the assessment, the public water system shall meet with the city or county to request an extension of time, which shall not exceed 30 days, to prepare and adopt the assessment.

(3) If the public water system fails to request an extension of time, or fails to submit the assessment notwithstanding the extension of time granted pursuant to paragraph (2), the city or county may seek a writ of mandamus to compel the governing body of the public water system to comply with the requirements of this part relating to the submission of the water supply assessment.

(h) Notwithstanding any other provision of this part, if a project has been the subject of a water supply assessment that complies with the requirements of this part, no additional water supply assessment shall be required for subsequent projects that were part of a larger project for which a water supply assessment was completed and that has complied with the requirements of this part and for which the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), has concluded that its water supplies are sufficient to meet the projected water demand associated with the proposed project, in addition to the existing and planned future uses, including, but not limited to, agricultural and industrial uses, unless one or more of the following changes occurs:

(1) Changes in the project that result in a substantial increase in water demand for the project.

(2) Changes in the circumstances or conditions substantially affecting the ability of the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), to provide a sufficient supply of water for the project.

(3) Significant new information becomes available which was not known and could not have been known at the time when the assessment was prepared.

*(Added by Stats. 1995, Ch. 881; Amended by Stats. 2001, Ch. 643.)*

**10911.** (a) If, as a result of its assessment, the public water system concludes that its water supplies are, or will be, insufficient, the public water system shall provide to the city or county its plans for acquiring additional water supplies, setting forth the measures that are being undertaken to acquire and develop those water supplies. If the city or county, if either is required to comply with this part pursuant to subdivision (b), concludes as a result of its assessment, that water supplies are, or will be, insufficient, the city or county shall include in its water supply assessment its plans for acquiring additional water supplies, setting forth the measures that are being undertaken to acquire and develop those water supplies. Those plans may include, but are not limited to, information concerning all of the following:

(1) The estimated total costs, and the proposed method of financing the costs, associated with acquiring the additional water supplies.

(2) All federal, state, and local permits, approvals, or entitlements that are anticipated to be required in order to acquire and develop the additional water supplies.

(3) Based on the considerations set forth in paragraphs (1) and (2), the estimated timeframes within which the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), expects to be able to acquire additional water supplies.

(b) The city or county shall include the water supply assessment provided pursuant to Section 10910, and any information provided pursuant to subdivision (a), in any environmental document prepared for the project pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(c) The city or county may include in any environmental document an evaluation of any information included in that environmental document provided pursuant to subdivision (b). The city or county shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If the city or county determines that water supplies will not be sufficient, the city or county shall include that determination in its findings for the project.

*(Added by Stats. 1995, Ch. 881; Amended by Stats. 2001, Ch. 643.)*

*(Effective Oct. 8, 2011 to Jan 2017)*

**10912.** For the purposes of this part, the following terms have the following meanings:

(a) "Project" means any of the following:

(1) A proposed residential development of more than 500 dwelling units.

(2) A proposed shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.

(3) A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.

(4) A proposed hotel or motel, or both, having more than 500 rooms.

(5) (A) Except as otherwise provided in subparagraph (B), a proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.

(B) A proposed photovoltaic or wind energy generation facility approved on or after the effective date of the amendments made to this section at the 2011-12 Regular Session is not a project if the facility would demand no more than 75 acre-feet of water annually.

(6) A mixed-use project that includes one or more of the projects specified in this subdivision.

(7) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

(b) If a public water system has fewer than 5,000 service connections, then “project” means any proposed residential, business, commercial, hotel or motel, or industrial development that would account for an increase of 10 percent or more in the number of the public water system’s existing service connections, or a mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by residential development that would represent an increase of 10 percent or more in the number of the public water system’s existing service connections.

(c) “Public water system” means a system for the provision of piped water to the public for human consumption that has 3,000 or more service connections. A public water system includes all of the following:

(1) Any collection, treatment, storage, and distribution facility under control of the operator of the system that is used primarily in connection with the system.

(2) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system.

(3) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(d) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

*(Added by Stats. 1995, Ch. 881; Amended by Stats. 2001, Ch. 643; Amended by Stats. 2011 Ch 588, eff. Oct 8, 2011)*

***(Operative Jan 2017)***

**10912.** For the purposes of this part, the following terms have the following meanings:

(a) “Project” means any of the following:

(1) A proposed residential development of more than 500 dwelling units.

(2) A proposed shopping center or business establishment employing

more than 1,000 persons or having more than 500,000 square feet of floor space.

(3) A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.

(4) A proposed hotel or motel, or both, having more than 500 rooms.

(5) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.

(6) A mixed-use project that includes one or more of the projects specified in this subdivision.

(7) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

(b) If a public water system has fewer than 5,000 service connections, then "project" means any proposed residential, business, commercial, hotel or motel, or industrial development that would account for an increase of 10 percent or more in the number of the public water system's existing service connections, or a mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by residential development that would represent an increase of 10 percent or more in the number of the public water system's existing service connections.

(c) "Public water system" means a system for the provision of piped water to the public for human consumption that has 3,000 or more service connections. A public water system includes all of the following:

(1) Any collection, treatment, storage, and distribution facility under control of the operator of the system that is used primarily in connection with the system.

(2) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system.

(3) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(d) This section shall become operative on January 1, 2017.

*(Added by Stats.2011, Ch. 588, eff Oct. 8, 2011, operative Jan 2017.)*

**10913.** (Repealed by Stats. 2001, Ch. 643.)

**10914.** (a) Nothing in this part is intended to create a right or entitlement to water service or any specific level of water service.

(b) Nothing in this part is intended to either impose, expand, or limit any duty concerning the obligation of a public water system to provide certain service to its existing customers or to any future potential customers.

(c) Nothing in this part is intended to modify or otherwise change existing law with respect to projects which are not subject to this part.

(d) This part applies only to a project for which a notice of preparation is submitted on or after January 1, 1996.

*(Added by Stats. 1995, Ch. 881.)*

**10915.** The County of San Diego is deemed to comply with this part if the Office of Planning and Research determines that all of the following conditions have been met:

(a) Proposition C, as approved by the voters of the County of San Diego in November 1988, requires the development of a regional growth management plan and directs the establishment of a regional planning and growth management review board.

(b) The County of San Diego and the cities in the county, by agreement, designate the San Diego Association of Governments as that review board.

(c) A regional growth management strategy that provides for a comprehensive regional strategy and a coordinated economic development and growth management program has been developed pursuant to Proposition C.

(d) The regional growth management strategy includes a water element to coordinate planning for water that is consistent with the requirements of this part.

(e) The San Diego County Water Authority, by agreement with the San Diego Association of Governments in its capacity as the review board, uses the association's most recent regional growth forecasts for planning purposes and to implement the water element of the strategy.

(f) The procedures established by the review board for the development and approval of the regional growth management strategy, including the water element and any certification process established to ensure that a project is consistent with that element, comply with the requirements of this part.

(g) The environmental documents for a project located in the County of San Diego include information that accomplishes the same purposes as a water supply assessment that is prepared pursuant to Section 10910.

*(Added by Stats. 1995, Ch. 881; Amended by Stats. 2001, Ch. 643.)*

### **PART 3. CENTRAL VALLEY PROJECT**

#### **CHAPTER 3. THE DEPARTMENT OF WATER RESOURCES**

##### **Article 3. Limitation of Powers**

*(Added by Stats. 1943, Ch. 370; Amended by Stats. 1957, Ch. 1932.)*

**11460.** In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.

**11461.** In no other way than by purchase or otherwise as provided in this part shall water rights of a watershed, area, or the inhabitants be impaired or curtailed by the department, but the provisions of this article shall be strictly limited to the acts and proceedings of the department, as such, and shall not apply to any persons or state agencies.

**11462.** The provisions of this article shall not be so construed as to create any new property rights other than against the department as provided in this part or to require the department to furnish to any person without adequate compensation therefor any water made available by the construction of any works by the department.

**11463.** In the construction and operation by the department of any project under the provisions of this part, no exchange of the water of any watershed or area for the water of any other watershed or any area may be made by the department unless the water requirements of the watershed or area in which the exchange is made are first and at all times met and satisfied to the extent that the requirements would have been met were the exchange not made, and no right to the use of water shall be gained or lost by reason of any such exchange.

**11464.** No water right, reservoir, conduit, or facility for the generation, production, transmission, or distribution of electric power, acquired by the department shall ever be sold, granted, or conveyed by the department so that the department thereby is divested of the title to and ownership of it.

**11465.** The department shall not make any change, alteration, or revision of any rates, prices, or charges established by any contract entered into pursuant to this part except as provided by the contract.

*(Added by Stats. 1943, Ch. 370; Amended by Stats. 1957, Ch. 1932.)*

## **CHAPTER 10.** **FISH, WILDLIFE AND RECREATION IN CONNECTION WITH** **STATE WATER PROJECTS**

### **Article 4.** **Planning and Construction of Projects**

**11912.** The department, in fixing and establishing prices, rates, and charges for water and power, shall include as a reimbursable cost of any state water project an amount sufficient to repay all costs incurred by the department, directly or by contract with other agencies, for the preservation of fish and wildlife and determined to be allocable to the costs of the project works constructed for the development of that water and power, or either. Costs incurred for the enhancement of fish and wildlife or for the development of public recreation shall not be included in the prices, rates, and charges for water and power, and shall be nonreimbursable costs.

*(Amended by Stats 2001, Ch. 745; Amended by Stats 2002, Ch. 664.)*

## **CHAPTER 11.** **WATER CONSERVATION AND RECLAMATION PROJECTS**

*(Added by Stats. 1985, Ch. 938)*

### **Article 1.** **Policy**

**11950.** This chapter shall be known and may be cited as the Water Conservation Projects Act of 1985.

**11951.** The Legislature hereby finds and declares all of the following:

(a) Agriculture is this state's largest income producer, contributing approximately \$14 billion annually to the economy of the state. California agriculture remains the leader in the development of modern agricultural technology and is supported by the world's leading agricultural education and research institutions. However, the future growth and prosperity of agriculture is threatened by a lack of necessary irrigation water.

(b) The population of California is expected to increase by over three million persons by the year 2000. This increase alone will require at least an additional 600,000 acre-feet of water annually for municipal purposes.

(c) Upon commencement of the operation of the Central Arizona Project which is scheduled to occur by 1985, over 662,000 acre-feet of water presently available for use each year in California will be lost to the State of Arizona pursuant to decisions of the United States Supreme Court. These court decisions decrease the total water supply available to California from the Colorado River by a quantity sufficient to supply the needs of three and one-half million people.

(d) The central San Joaquin Valley faces a critical water shortage amounting to approximately 1.4 million acre-feet annually which is presently being mined from the groundwater basin. The lowering of the groundwater table is causing irrigation water to be pumped at excessive depths of 500 to 600 feet or more, which requires a tremendous use of energy at a high cost.

(e) Based on a 50 year average, California faces a drought in one out of every four years. During periods such as the 1976-1977 drought, the state has had critical water shortages, requiring emergency conservation measures and resulting in thousands of acres of prime agricultural land in the San Joaquin Valley remaining unplanted. At the peak of the 1976-77 drought period, the state lost approximately \$1.5 billion in crop revenues as a result of inadequate supplies of irrigation water.

(f) A portion of the foregoing water requirements may be economically met by water conservation and reclamation projects which produce substantial quantities of additional usable water for use in areas of the state with inadequate local supplies.

**11952.** (a) It is the intent of the Legislature in enacting this chapter to encourage local agencies and private enterprise to implement potential water conservation and reclamation projects by establishing a state program to finance or assist in financing projects which meet state criteria and will result in additional supplies of water for use in areas of need. Water conservation and reclamation projects, including facilities for municipal and industrial advanced waste water treatment, regulatory impoundments, improvements to water supply and delivery systems, tailwater recovery systems, and sprinkler or drip irrigation systems, may result in increased quantities of usable water for beneficial purposes, but may be financially unattractive at the local level if the cost of additional fresh water is less than the cost to conserve or reclaim water.

(b) It is in the interests of both the users of water supplied by the state and the users of local water supplies to undertake water conservation and reclamation projects which supply water for purposes of the State Water Resources Development System at a cost less than the cost of new state water development facilities, and which provide benefits to local water users, including decreased salt concentrations, resulting from increased irrigation efficiency and reduced problems of pollution from waste water discharges. It is not the intent of the Legislature in enacting this chapter to affect or otherwise defer the construction of water facilities necessary to meet the requirements of the people of this state, and nothing in this chapter shall be construed to affect the authority of the department under any other provision of law.

**11953.** Nothing in this chapter shall be construed to alter or impair any provision of law providing protections for areas of origin, including, but not limited to, Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Section 10505, Article 3 (commencing with Section 11460) of Chapter 3, or Part 4.5 (commencing with Section 12200).

**11954.** Nothing in this chapter shall be construed to alter or impair any existing rights, including rights to divert water from the Colorado River and rights to the distribution or use of that water.

## **Article 2.** **Statewide Water Conservation**

**11960.** Any water supplier or user of water in the state that has an existing right which permits the supplier or user to sell water may enter into a contract under this chapter to finance the conservation or recycling of water and to sell the conserved or recycled water to another water supplier or water user.

*(Amended by Stats. 1995, Ch. 28.)*

**11961.** Notwithstanding any other provision of law, where any person or public agency undertakes any water conservation effort, either separately or jointly, pursuant to any contract with any other water user, which results in a reduced use of water by that person or agency, 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.

**11962.** Water conservation and reclamation projects eligible for assistance under this chapter include, but are not limited to, the following:

(a) Projects for municipal and industrial advanced waste water treatment to permit the reuse of the water for additional purposes.

(b) Projects for the improvement of water supply and delivery facilities.

(c) Projects for the improvement of on-farm irrigation systems, including tailwater recovery systems, regulatory impoundments, and sprinkler, drip, or other irrigation systems which enable more efficient use of water.

**11963.** Any contract entered into pursuant to this chapter for the transfer or sale of conserved or recycled water may provide for the recall of water and may include terms for that recall. Any recall provisions shall include a notice period of not less than five years unless otherwise agreed by the parties.

*(Amended by Stats. 1995, Ch. 28.)*

**11964.** Water conservation or reclamation projects developed pursuant to this chapter may be funded pursuant to any bond law heretofore or hereafter approved by the voters if the project is otherwise eligible for funding under the bond law.

**11965.** This article shall not be applicable to the State Water Resources Development System.

### **Article 3.**

#### **Conservation in the State Water Resources Development System**

**11970.** The department may use Central Valley Project revenue bonds or other funds available for the purposes of the State Water Resources Development System to finance, in whole or in part, water conservation programs and facilities that reduce demands by the sponsoring contractor for project water from the system for a period of time agreed to by the sponsoring contractor, and thereby increase the supply of project water available in the Sacramento-San Joaquin Delta for distribution to other contractors.

**11971.** As used in this article, “sponsoring contractor” means a contractor or contractors, who have a long-term water supply contract with the department and who agree to reduce demands for project water from the State Water Resources Development System in accordance with Section 11970.

**11972.** A local water conservation project described in Section 11970 is eligible for funding pursuant to this article if, in the determination of the department, the project meets all of the following criteria:

(a) The project is engineeringly feasible and is capable of producing project water which is economically competitive with alternative new water supply sources.

(b) The construction and operation of the facilities and programs will not interfere with the requested deliveries of annual entitlement water to any contractor other than the sponsoring contractor.

(c) The project will not result in any greater annual charges to any contractor, other than the sponsoring contractor, than would have occurred with the construction at the same time of alternative new water supply sources constituting either reservoirs located north of the delta or off-aqueduct storage reservoirs located south or west of the delta designed to deliver water to the California Aqueduct.

**11973.** The department shall determine whether a local water conservation project described in Section 11970 is economically competitive by comparing, in

an engineering and economic analysis, the local conservation project with alternative new water supply sources constituting either reservoirs located north of the delta or off-aqueduct storage reservoirs located south or west of the delta designed to supply water to the California Aqueduct. The analysis for the alternative new water supply sources shall use the average cost per acre-foot of yield in the latest studies made for those sources by the department and shall compare those facilities with the proposed local conservation project using commonly accepted engineering economics. In the case of a local conservation project to be funded in part by the department as part of the system and in part from other sources, the economic analysis shall be applied only to the portion to be funded by the department as a part of the system.

**11974.** A local water conservation project described in Section 11970 shall not be constructed or implemented pursuant to this article until both of the following occurs:

(a) The sponsoring contractor signs a written agreement with the department which indicates all of the following:

(1) The approval of the facility or program by the sponsoring contractor.

(2) The yield and the period of time during which the water from the local conservation project constitutes project water.

(3) The disposition of the local conservation project or of the yield from the local conservation project upon the expiration of that period of time.

(b) All contractors within whose boundaries any portion of the local water conservation project is located, and who are not sponsoring contractors for the local conservation project, approve the local water conservation project in writing.

**11975.** In the event of a shortage in water supply, within the meaning of Article 18(a) of the standard water supply contract between the department and the state water supply contractors, the determination of whether to count, in whole or in part, the reduced demand from future conservation programs described in Section 11970 in the allocation of deficiencies among contractors shall be based on a project-by-project evaluation taking into consideration such factors as any limitation on the use of the water from the facilities and whether the sponsoring contractor has access to project water from the delta as an alternate to those facilities.

**11976.** This article is the only portion of this chapter applicable to the State Water Resources Development System.

#### **Article 4. Administration**

**11980.** The department shall establish criteria for determining the eligibility of water conservation projects for assistance under this chapter and shall establish criteria for determination of the economic, financial, and engineering feasibility of proposed water conservation projects. The department shall establish guidelines to encourage feasibility studies to determine potential sources of conserved water

for purposes of this chapter and to determine parties interested in contracting with potential water purchasers pursuant to this chapter.

**11981.** The State Water Resources Control Board shall establish criteria for determining both of the following:

(a) The eligibility of water reclamation projects for assistance under this chapter.

(b) The economic, financial, and engineering feasibility of proposed reclamation projects.

**11982.** The department shall establish criteria for determining whether a water conservation or reclamation project results in a net increase in the amount of water made available for use and does not interfere with an established right to use of water by any other person or entity.

**11983.** The department and the State Water Resources Control Board shall only approve for funding by the state under this chapter those projects which result in a net increase in the amount of water available for use and which do not interfere with an established right to use of water by any other person or entity. Any agreement between parties for a conservation or reclamation project not using state financing shall not require approval by the department or the State Water Resources Control Board under this chapter but shall comply with the criteria adopted under Section 11981 or 11982.

**11984.** The department is authorized to adopt those rules and regulations as may be necessary to carry out, and as are consistent with, this chapter.

**11985.** In providing financial assistance pursuant to this chapter, the department shall impose terms and conditions that are designed to protect the state's investment and that are necessary to carry out the purposes of this chapter. The department shall keep full and complete records and accounts concerning all of its transactions under this chapter and shall render a report on those transactions to the Legislature within 15 days after the commencement of the first regular session of the Legislature following the effective date of this chapter.

*(Added by Stats. 1985, Ch. 938.)*

## **PART 4.5** **SACRAMENTO—SAN JOAQUIN DELTA**

*(Added by Stats. 1959, Ch. 1766)*

### **CHAPTER 1.** **GENERAL POLICY**

**12200.** The Legislature hereby finds that the water problems of the Sacramento-San Joaquin Delta are unique within the State; the Sacramento and San Joaquin Rivers join at the Sacramento-San Joaquin Delta to discharge their fresh water flows into Suisun, San Pablo and San Francisco Bays and thence into the Pacific

Ocean; the merging of fresh water with saline bay waters and drainage waters and the withdrawal of fresh water for beneficial uses creates an acute problem of salinity intrusion into the vast network of channels and sloughs of the Delta; the State Water Resources Development System has as one of its objectives the transfer of waters from water-surplus areas in the Sacramento Valley and the north coastal area to water-deficient areas to the south and west of the Sacramento-San Joaquin Delta via the Delta; water surplus to the needs of the areas in which it originates is gathered in the Delta and thereby provides a common source of fresh water supply for water-deficient areas. It is, therefore, hereby declared that a general law cannot be made applicable to said Delta and that the enactment of this law is necessary for the protection, conservation, development, control and use of the waters in the Delta for the public good.

**12201.** The Legislature finds that the maintenance of an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta area as set forth in Section 12220, Chapter 2, of this part, and to provide a common source of fresh water for export to areas of water deficiency is necessary to the peace, health, safety and welfare of the people of the State, except that delivery of such water shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code.

**12202.** Among the functions to be provided by the State Water Resources Development System, in coordination with the activities of the United States in providing salinity control for the Delta through operation of the Federal Central Valley Project, shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta. If it is determined to be in the public interest to provide a substitute water supply to the users in said Delta in lieu of that which would be provided as a result of salinity control no added financial burden shall be placed upon said Delta water users solely by virtue of such substitution. Delivery of said substitute water supply shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code.

**12203.** It is hereby declared to be the policy of the State that no person, corporation or public or private agency or the State or the United States should divert water from the channels of the Sacramento-San Joaquin Delta to which the users within said Delta are entitled.

**12204.** In determining the availability of water for export from the Sacramento-San Joaquin Delta no water shall be exported which is necessary to meet the requirements of Sections 12202 and 12203 of this chapter.

**12205.** It is the policy of the State that the operation and management of releases from storage into the Sacramento-San Joaquin Delta of water for use outside the area in which such water originates shall be integrated to the maximum extent possible in order to permit the fulfillment of the objectives of this part.

**PART 4.6**  
**SAN JOAQUIN RIVER**  
*(Added by Stats. 1961, Ch. 1454)*

**12230.** The Legislature hereby finds and declares that a serious problem of water quality exists in the San Joaquin River between the junction of the San Joaquin River and the Merced River and the junction of the San Joaquin River with Middle River; that by virtue of the nature and causes of the problem and its effect upon water supplies in the Sacramento-San Joaquin Delta, it is a matter of statewide interest and is the responsibility of the State to determine an equitable and feasible solution to this problem.

**12231.** It is hereby declared to be the policy of the State that no person, corporation or public or private agency or the State or the United States should divert water from the San Joaquin River and its tributaries to which the users along the portion of the San Joaquin River described in Section 12230 are entitled.

**12232.** The State Water Resources Control Board, the State Department of Water Resources, the California Water Commission, and any other agency of the state having jurisdiction, shall do nothing, in connection with their responsibilities, to cause further significant degradation of the quality of water in that portion of the San Joaquin River between the points specified in Section 12230.

**12233.** Nothing in this part shall be construed as affecting the quality of water diverted into the Sacramento-San Joaquin Delta from the Sacramento River, nor as affecting any vested right to the use of water, regardless of origin, or any water project for which an application to appropriate water was filed with the State Water Resources Control Board prior to June 17, 1961.

**DIVISION 7.**  
**WATER QUALITY**

**CHAPTER 3.**  
**STATE WATER QUALITY CONTROL**

**Article 3.**  
**State Policy for Water Quality Control**

**13140.** The state board shall formulate and adopt state policy for water quality control. Such policy shall be adopted in accordance with the provisions of this article and shall be in conformity with the policies set forth in Chapter 1 (commencing with Section 13000).

*(Added by Stats. 1969, Ch. 482.)*

**13141.** State policy for water quality control adopted or revised in accordance with the provisions of this article, and regional water quality control plans approved or revised in accordance with Section 13245, shall become a part of the California Water Plan effective when such state policy for water quality control, and such regional water quality control plans have been reported to the Legislature at any session thereof.

However, prior to implementation of any agricultural water quality control program, an estimate of the total cost of such a program, together with an identification of potential sources of financing, shall be indicated in any regional water quality control plan.

*(Added by Stats. 1969, Ch. 482.)*

**13142.** State policy for water quality control shall consist of all or any of the following:

(a) Water quality principles and guidelines for long-range resource planning, including ground water and surface water management programs and control and use of recycled water.

(b) Water quality objectives at key locations for planning and operation of water resource development projects and for water quality control activities.

(c) Other principles and guidelines deemed essential by the state board for water quality control.

The principles, guidelines, and objectives shall be consistent with the state goal of providing a decent home and suitable living environment for every Californian.

*(Added by Stats. 1969, Ch. 482; Amended by Stats. 1971, Ch. 1288; Amended by Stats 1979, Ch. 947; Amended by Stats. 1995, Ch. 28.)*

**13142.5.** In addition to any other policies established pursuant to this division, the policies of the state with respect to water quality as it relates to the coastal marine environment are that:

(a) Wastewater discharges shall be treated to protect present and future beneficial uses, and, where feasible, to restore past beneficial uses of the receiving waters. Highest priority shall be given to improving or eliminating discharges that adversely affect any of the following:

(1) Wetlands, estuaries, and other biologically sensitive sites.

(2) Areas important for water contact sports.

(3) Areas that produce shellfish for human consumption.

(4) Ocean areas subject to massive waste discharge.

Ocean chemistry and mixing processes, marine life conditions, other present or proposed outfalls in the vicinity, and relevant aspects of areawide waste treatment management plans and programs, but not of convenience to the discharger, shall for the purposes of this section, be considered in determining the effects of such discharges. Toxic and hard-to-treat substances should be

pretreated at the source if such substances would be incompatible with effective and economical treatment in municipal treatment plants.

(b) For each new or expanded coastal powerplant or other industrial installation using seawater for cooling, heating, or industrial processing, the best available site, design, technology, and mitigation measures feasible shall be used to minimize the intake and mortality of all forms of marine life.

(c) Where otherwise permitted, new warmed or cooled water discharges into coastal wetlands or into areas of special biological importance, including marine reserves and kelp beds, shall not significantly alter the overall ecological balance of the receiving area.

(d) Independent baseline studies of the existing marine system should be conducted in the area that could be affected by a new or expanded industrial facility using seawater in advance of the carrying out of the development.

(e) (1) Adequately treated recycled water should, where feasible, be made available to supplement existing surface and underground supplies and to assist in meeting future water requirements of the coastal zone, and consideration, in statewide programs of financial assistance for water pollution or water quality control, shall be given to providing optimum water recycling and use of recycled water.

(2) If recycled water is available for industrial use, any discharge to waters in the coastal zone, including the San Francisco Bay, after industrial use, may be authorized if all of the following conditions are met:

(A) The discharge will not unreasonably affect beneficial uses.

(B) The discharge is consistent with applicable water quality control plans and state policy for water quality control.

(C) The use of recycled water is consistent with Chapter 7 (commencing with Section 13500).

(D) The discharge is consistent with all applicable requirements of Chapter 5.5 (commencing with Section 13370).

(E) The discharge is to the same general receiving water location as that to which the wastewater would be discharged if not reused.

(3) Any requirement imposed pursuant to Section 13263 or 13377 shall be adjusted to reflect a credit for waste present in the recycled water before reuse. The credit shall be limited to the difference between the amount of waste present in the nonrecycled water supply otherwise available to the industry and the amount of waste present in the recycled water.

(4) If the amount of waste in the discharge exceeds prescribed requirements because the amount of waste in the recycled water is in excess of that agreed to be furnished by the supplier to the discharger, no enforcement action shall be taken against the discharger unless both of the following statements apply:

(A) The supplier of the recycled water fails to correct the problem within 30 days after the cause of the problem is identified, or within any greater period of time agreed to by the appropriate regional board.

(B) The discharger continues to receive the recycled water from the supplier.

(f) This section shall not apply to industrial discharges into publicly owned treatment works.

*(Added by Stats. 1976, Ch. 1330; Amended by Stats. 1977, Ch. 579; Amended by Stats. 1993, Ch. 1119; Amended by Stats. 1995, Ch. 28.)*

**13143.** State policy for water quality control shall be periodically reviewed and may be revised.

*(Added by Stats. 1969, Ch. 482.)*

**13144.** During the process of formulating or revising state policy for water quality control the state board shall consult with and carefully evaluate the recommendations of concerned federal, state, and local agencies.

*(Added by Stats. 1969, Ch. 482.)*

**13145.** The state board shall take into consideration the effect of its actions pursuant to this chapter on the California Water Plan as adopted or revised pursuant to Division 6 (commencing with Section 10000) of this code, and on any other general or coordinated governmental plan looking toward the development, utilization, or conservation of the waters of the state.

*(Added by Stats. 1969, Ch. 482.)*

**13146.** State offices, departments and boards, in carrying out activities which affect water quality, shall comply with state policy for water quality control unless otherwise directed or authorized by statute, in which case they shall indicate to the state board in writing their authority for not complying with such policy.

*(Added by Stats. 1969, Ch. 482.)*

**13147.** The state board shall not adopt state policy for water quality control unless a public hearing is first held respecting the adoption of such policy. At least 60 days in advance of such hearing the state board shall notify any affected regional boards, unless notice is waived by such boards, and shall give notice of such hearing by publication within the affected region pursuant to Section 6061 of the Government Code. The regional boards shall submit written recommendations to the state board at least 20 days in advance of the hearing.

*(Added by Stats. 1969, Ch. 482; Amended by Stats. 1971, Ch. 1288.)*

#### **Article 4.**

#### **Other Powers and Duties of the State Board**

**13160.** The state board is designated as the state water pollution control agency for all purposes stated in the Federal Water Pollution Control Act and any other federal act, heretofore or hereafter enacted, and is

(a) authorized to give any certificate or statement required by any federal agency pursuant to any such federal act that there is reasonable assurance that an activity of any person subject to the jurisdiction of the state board will not reduce water quality below applicable standards, and

(b) authorized to exercise any powers delegated to the state by the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.) and acts amendatory thereto.

**13160.1.** (a) The state board may establish a reasonable fee schedule to cover the costs incurred by the state board and the regional boards in connection with any certificate that is required or authorized by any federal law with respect to the effect of any existing or proposed facility, project, or construction work upon the quality of waters of the state, including certificates requested by applicants for a federal permit or license pursuant to Section 401 of the Federal Water Pollution Control Act, as amended, and certificates requested pursuant to Section 169 of the Internal Revenue Code, as amended, with respect to water pollution control facilities.

(b) In providing for the recovery of costs incurred by the state board and regional board pursuant to this section, the state board may include in the fee schedule, but is not limited to including, the costs incurred in reviewing applications for certificates, prescribing terms of certificates and monitoring requirements, enforcing and evaluating compliance with certificates and monitoring requirements, conducting monitoring and modeling, analyzing laboratory samples, reviewing documents prepared for the purpose of regulating activities subject to certificates, and administrative costs incurred in connection with carrying out these actions. The costs of reviewing applications for certificates include, but are not limited to, the costs incurred in anticipation of the filing of an application for a certificate, including participation in any prefiling consultation, and investigation or studies to evaluate the impacts of the proposed activity.

(c) (1) The fee schedule may provide for payment of a single fee in connection with the filing of an application, or for periodic or annual fees, as appropriate to the type of certificate issued and the activity authorized by the certificate.

(2) The fee schedule authorized by this section may impose a fee upon any of the following:

(A) Any person who files an application for a certificate.

(B) Any person who files with the state board or a regional board a notice of intent to file an application for a certificate, or who files with a federal agency a notice of intent to apply for a federal permit or license for which a certificate will be required under Section 401 of the Federal Water Pollution Control Act.

(C) Any person holding a federal permit or license for which a certificate has been issued.

(D) Any person required to send a notice of intent to the state board or a regional board to proceed with an activity permitted by a general permit subject to certification under Section 13160.

(d) (1) If the state board establishes a fee schedule pursuant to this section, the state board shall adopt the fee schedule by emergency regulation. The state board shall set the amount of total revenues collected each year through the

fee authorized by this section at an amount equal to the revenue levels set forth in the annual Budget Act for this activity. The state board shall review and revise the fee each fiscal year as necessary to conform with the revenue levels set forth in the annual Budget Act. If the state board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the annual Budget Act, the state board may further adjust the annual fees to compensate for the over or under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, any amendment thereto, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall remain in effect until revised by the state board.

(e) Any fees collected pursuant to this section in connection with certificates for activities involving hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission shall be deposited in the Water Rights Fund.

*(Added by Stats. 1971, Ch. 1288; Amended by Stats. 1976, Ch. 596; Amended by Stats. 2003, Ch. 741.)*

**13167.** (a) The state board shall implement, with the assistance of the regional boards, a public information program on matters involving water quality, and shall place and maintain on its Internet Web site, in a format accessible to the general public, an information file on water quality monitoring, assessment, research, standards, regulation, enforcement, and other pertinent matters.

(b) The information file described in subdivision (a) shall include, but need not be limited to, copies of permits, waste discharge requirements, waivers, enforcement actions, and petitions for review of these actions pursuant to this division. The file shall include copies of water quality control plans and policies, including any relevant management agency agreements pursuant to this chapter and Chapter 4 (commencing with Section 13200), and monitoring data and assessment information, or shall identify Internet links to that information. The state board, in consultation with the regional boards, shall ensure that the information is available in single locations, rather than separately by region, and that the information is presented in a manner easily understandable by the general public.

*(Added by Stats. 1969, Ch. 482; Amended by Stats. 2006, Ch. 750.)*

**13167.5.** (a) The state board or the regional board, as applicable, shall provide notice and a period of at least 30 days for public comment prior to the adoption of any of the following:

(1) Waste discharge requirements prescribed pursuant to Sections 13263 or 13377.

(2) Water reclamation requirements prescribed pursuant to Section 13523.

(3) An order issued pursuant to Section 13320.

(4) A time schedule order adopted pursuant to Section 13300 that sets forth a schedule of compliance and required actions relating to waste discharge requirements prescribed pursuant to Section 13263 or 13377.

(b) The notification required by subdivision (a) may be provided by mailing a draft of the waste discharge requirements, water reclamation requirements, time schedule order, or order issued pursuant to Section 13320 to each person who has requested notice of the specific item, or by posting a draft of the respective requirements or order on the official Internet site maintained by the state board or regional board, and providing notice of that posting by electronic mail to each person who has requested notice.

(c) This section does not require the state board or the regional board to provide more than one notice or more than one public comment period prior to the adoption of waste discharge requirements, water reclamation requirements, a time schedule order, or an order issued pursuant to Section 13320.

*(Added by Stats. 2003, Ch. 690.)*

## CHAPTER 5.5

### COMPLIANCE WITH THE PROVISIONS OF THE FEDERAL WATER POLLUTION CONTROL ACT AS AMENDED IN 1972

**13383.** (a) The state board or a regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements, as authorized by Section 13160, 13376, or 13377 or by subdivisions (b) and (c) of this section, for any person who discharges, or proposes to discharge, to navigable waters, any person who introduces pollutants into a publicly owned treatment works, any person who owns or operates, or proposes to own or operate, a publicly owned treatment works or other treatment works treating domestic sewage, or any person who uses or disposes, or proposes to use or dispose, of sewage sludge.

(b) The state board or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.

(c) The state board or a regional board may inspect the facilities of any person subject to this section pursuant to the procedure set forth in subdivision (c) of Section 13267.

**13385.** (a) A person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) A waste discharge requirement or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(3) A requirement established pursuant to Section 13383.

(4) An order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(5) A requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1341, or 1345), as amended.

(6) A requirement imposed in a pretreatment program approved pursuant to waste discharge requirements issued under Section 13377 or approved pursuant to a permit issued by the administrator.

(b) Civil liability may be imposed by the superior court in an amount not to exceed the sum of both of the following:

(1) Twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed twenty-five dollars (\$25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose the liability.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(d) For purposes of subdivisions (b) and (c), "discharge" includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f) (1) Except as provided in paragraph (2), for the purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(2) (A) For the purposes of subdivisions (h) and (i), a single operational

upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in violations of more than one effluent limitation and the violations continue for a period of more than one day, if all of the following apply:

(i) The discharger demonstrates all of the following:

(I) The upset was not caused by wastewater treatment operator error and was not due to discharger negligence.

(II) But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day.

(III) The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.

(ii) The discharger is implementing an approved pretreatment program, if so required by federal or state law.

(B) Subparagraph (A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal, except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.

(h) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

(2) For the purposes of this section, a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(i) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(A) Violates a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(2) For the purposes of this section, a “period of six consecutive months” means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

(j) Subdivisions (h) and (i) do not apply to any of the following:

(1) A violation caused by one or any combination of the following:

- (A) An act of war.
- (B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.
- (C) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.
- (D) (i) The operation of a new or reconstructed wastewater treatment unit during a defined period of adjusting or testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit, if all of the following requirements are met:
- (I) The discharger has submitted to the regional board, at least 30 days in advance of the operation, an operations plan that describes the actions the discharger will take during the period of adjusting and testing, including steps to prevent violations and identifies the shortest reasonable time required for the period of adjusting and testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit.
- (II) The regional board has not objected in writing to the operations plan.
- (III) The discharger demonstrates that the violations resulted from the operation of the new or reconstructed wastewater treatment unit and that the violations could not have reasonably been avoided.
- (IV) The discharger demonstrates compliance with the operations plan.
- (V) In the case of a reconstructed wastewater treatment unit, the unit relies on a biological treatment process that is required to be out of operation for at least 14 days in order to perform the reconstruction, or the unit is required to be out of operation for at least 14 days and, at the time of the reconstruction, the cost of reconstructing the unit exceeds 50 percent of the cost of replacing the wastewater treatment unit.
- (ii) For the purposes of this section, "wastewater treatment unit" means a component of a wastewater treatment plant that performs a designated treatment function.
- (2) (A) Except as provided in subparagraph (B), a violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:
- (i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000, specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i), and the date by which compliance is required to be achieved and, if the final date by which compliance is required to be achieved is later than one year from the effective date of the cease and desist order or time schedule order, specifies the interim requirements by which progress towards compliance will be measured and the date by which the discharger will be in compliance with each interim requirement.

(ii) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan that meets the requirements of Section 13263.3.

(iii) The discharger demonstrates that it has carried out all reasonable and immediately feasible actions to reduce noncompliance with the waste discharge requirements applicable to the waste discharge and the executive officer of the regional board concurs with the demonstration.

(B) Subdivisions (h) and (i) shall become applicable to a waste discharge on the date the waste discharge requirements applicable to the waste discharge are revised and reissued pursuant to Section 13380, unless the regional board does all of the following on or before that date:

(i) Modifies the requirements of the cease and desist order or time schedule order as may be necessary to make it fully consistent with the reissued waste discharge requirements.

(ii) Establishes in the modified cease and desist order or time schedule order a date by which full compliance with the reissued waste discharge requirements shall be achieved. For the purposes of this subdivision, the regional board may not establish this date later than five years from the date the waste discharge requirements were required to be reviewed pursuant to Section 13380. If the reissued waste discharge requirements do not add new effluent limitations or do not include effluent limitations that are more stringent than those in the original waste discharge requirements, the date shall be the same as the final date for compliance in the original cease and desist order or time schedule order or five years from the date that the waste discharge requirements were required to be reviewed pursuant to Section 13380, whichever is earlier.

(iii) Determines that the pollution prevention plan required by clause (ii) of subparagraph (A) is in compliance with the requirements of Section 13263.3 and that the discharger is implementing the pollution prevention plan in a timely and proper manner.

(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308, if all of the following requirements are met:

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).

(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(ii) New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures are necessary in order to comply with the effluent limitation and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.

(iv) The discharger is a publicly owned treatment works located in Orange County that is unable to meet effluent limitations for biological oxygen demand, suspended solids, or both, because the publicly owned treatment works meets all of the following criteria:

(I) Was previously operating under modified secondary treatment requirements pursuant to Section 301(h) of the Clean Water Act (33 U.S.C. Sec. 1311(h)).

(II) Did vote on July 17, 2002, not to apply for a renewal of the modified secondary treatment requirements.

(III) Is in the process of upgrading its treatment facilities to meet the secondary treatment standards required by Section 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec. 1311(b)(1)(B)).

(C) (i) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. Except as provided in clause (ii), for the purposes of this subdivision, the time schedule shall not exceed five years in length.

(ii) (I) For purposes of the upgrade described in subclause (III) of clause (iv) of subparagraph (B), the time schedule shall not exceed 10 years in length.

(II) Following a public hearing, and upon a showing that the discharger is making diligent progress toward bringing the waste discharge into compliance with the effluent limitation, the regional board may extend the time schedule for an additional period not exceeding five years in length, if the discharger demonstrates that the additional time is necessary to comply with the effluent limitation. This subclause does not apply to a time schedule described in subclause (I).

(iii) If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both of the following:

(I) Effluent limitations for the pollutant or pollutants of concern.

(II) Actions and milestones leading to compliance with the effluent limitation.

(D) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a

pollution prevention plan pursuant to Section 13263.3.

(k) (1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:

(A) The compliance project is designed to correct the violations within five years.

(B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.

(C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

(2) For the purposes of this subdivision, “a publicly owned treatment works serving a small community” means a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

(l) (1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

(2) For the purposes of this section, a “supplemental environmental project” means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

(3) This subdivision applies to the imposition of penalties pursuant to subdivision (h) or (i) on or after January 1, 2003, without regard to the date on which the violation occurs.

(m) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any liability or penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any liability or penalty imposed under this section shall be required to pay, in addition to that liability or penalty, interest, attorney’s fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person’s penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(n) (1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, moneys collected

for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1341, or 1345), in accordance with paragraph (5) of subdivision (a) shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

(o) The state board shall continuously report and update information on its Internet Web site, but at a minimum, annually on or before January 1, regarding its enforcement activities. The information shall include all of the following:

(1) A compilation of the number of violations of waste discharge requirements in the previous calendar year, including stormwater enforcement violations.

(2) A record of the formal and informal compliance and enforcement actions taken for each violation, including stormwater enforcement actions.

(3) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

(p) The amendments made to subdivisions (f), (h), (i), and (j) during the second year of the 2001-02 Regular Session apply only to violations that occur on or after January 1, 2003.

*(Added by Stats. 1987, Ch. 1189; Amended by Stats. 1999, Ch. 92; Amended by Stats. 1999, Ch. 93; Amended by Stats. 2000, Ch. 807; Amended by Stats. 2001, Ch. 869; Amended by Stats. 2002, Ch. 995; Amended by Stats. 2003, Ch. 683; Amended by Stats. 2004, Ch. 644; Amended by Stats. 2004, Ch. 644; Amended by Stats. 2006, Ch. 404; Amended by Stats. 2007, Ch. 130; Amended by Stats. 2010, Ch. 645; Amended by Stats. 2011, Ch. 296.)*

**13385.1.** (a) (1) For the purposes of subdivision (h) of Section 13385, a “serious violation” also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations. This paragraph applies only to violations that occur on or after January 1, 2004.

(2) (A) Notwithstanding paragraph (1), a failure to file a discharge monitoring report is not a serious violation for purposes of subdivision (h) of Section 13385 at any time prior to the date a discharge monitoring report is required to be filed or within 30 days after receiving written notice from the state board or a regional board of the need to file a discharge monitoring report, if the discharger submits a written statement to the state board or the regional board that includes both of the following:

(i) A statement that there were no discharges to waters of the United States reportable under the applicable waste discharge requirements during the relevant monitoring period.

(ii) The reason or reasons the required report was not submitted to the regional board by the deadline for filing that report.

(B) Upon the request of the state board or regional board, the discharger may be required to support the statement with additional explanation or evidence.

(C) If, in a statement submitted pursuant to subparagraph (A), the discharger willfully states as true any material fact that he or she knows to be false, that person shall be subject to a civil penalty not exceeding ten thousand dollars (\$10,000). Any public prosecutor may bring an action for a civil penalty under this subparagraph in the name of the people of the State of California, and the penalty imposed shall be enforced as a civil judgment.

(D) Notwithstanding subparagraph (A), the failure to file a discharge monitoring report is subject to penalties in accordance with subdivisions (c) and (e) of Section 13385.

(b) (1) Notwithstanding paragraph (1) of subdivision (a), a mandatory minimum penalty shall continue to apply and shall be assessed pursuant to subdivision (h) of Section 13385, but only for each required report that is not timely filed, and shall not be separately assessed for each 30-day period following the deadline for submitting the report, if both of the following conditions are met:

(A) The discharger did not on any occasion previously receive, from the state board or a regional board, a complaint to impose liability pursuant to subdivision (b) or (c) of Section 13385 arising from a failure to timely file a discharge monitoring report, a notice of violation for failure to timely file a discharge monitoring report, or a notice of the obligation to file a discharge monitoring report required pursuant to Section 13383, in connection with its corresponding waste discharge requirements.

(B) The discharges during the period or periods covered by the report do not violate effluent limitations, as defined in subdivision (d), contained in waste discharge requirements.

(2) Paragraph (1) shall only apply to a discharger who does both of the following:

(A) Files a discharge monitoring report that had not previously been timely filed within 30 days after the discharger receives written notice, including notice transmitted by electronic mail, from the state board or regional board concerning the failure to timely file the report.

(B) Pays all penalties assessed by the state board or regional board in accordance with paragraph (1) within 30 days after an order is issued to pay these penalties pursuant to Section 13385.

(3) Notwithstanding paragraph (1), the failure to file a discharge monitoring report is subject to penalties in accordance with subdivisions (c) and (e) of Section 13385.

(4) This subdivision shall become inoperative on January 1, 2014.

(c) (1) Notwithstanding any other provision of law, moneys collected pursuant to this section for a failure to timely file a report, as described in subdivision (a), shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) Notwithstanding Section 13340 of the Government Code, the funds described in paragraph (1) are continuously appropriated, without regard to fiscal

years, to the state board for expenditure by the state board to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in responding to significant water pollution problems.

(d) For the purposes of this section, paragraph (2) of subdivision (f) of Section 13385, and subdivisions (h), (i), and (j) of Section 13385 only, “effluent limitation” means a numeric restriction or a numerically expressed narrative restriction, on the quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants that may be discharged from an authorized location. An effluent limitation may be final or interim, and may be expressed as a prohibition. An effluent limitation, for those purposes, does not include a receiving water limitation, a compliance schedule, or a best management practice.

(e) The amendments made to this section by Senate Bill 1284 of the 2009-10 Regular Session of the Legislature shall apply to violations for which an administrative civil liability complaint or a judicial complaint has not been filed before July 1, 2010, without regard to the date on which the violations occurred.

*(Added by Stats. 2003, Ch. 609; Amended by Stats. 2005, Ch. 145; Amended by Stats. 2006, Ch. 538; Amended by Stats. 2008, Ch. 760; Amended by Stats. 2010, Ch. 645.)*

**13385.2.** (a) Prior to the state board or regional board making its findings pursuant to subdivision (k) of Section 13385, the publicly owned treatment works shall demonstrate to the satisfaction of the state board or regional board that the financing plan prepared pursuant to subparagraph (C) of paragraph (1) of subdivision (k) of that section is designed to generate sufficient funding to complete the compliance project within the time period specified pursuant to subparagraph (A) of paragraph (1) of subdivision (k) of that section.

(b) This section shall only become operative if Senate Bill 1733 of the 2005-06 Regular Session is enacted and becomes operative.

*(Added by Stats. 2006, Ch. 725.)*

**13385.3.** (a) The amendments made to subdivision (k) of Section 13385 of the Water Code by Senate Bill 1733 of the 2005-06 Regular Session shall become operative on July 1, 2007.

(b) This section shall only become operative if Senate Bill 1733 of the 2005-06 Regular Session is enacted and becomes operative.

*(Added by Stats. 2006, Ch. 725.)*

**13386.** Upon any threatened or continuing violation of any of the requirements listed in paragraphs (1) to (6), inclusive, of subdivision (a) of Section 13385, or upon the failure of any discharger into a public treatment system to comply with any cost or charge adopted by any public agency under Section 204(b) of the Federal Water Pollution Control Act, as amended, the Attorney General, upon the request of the state board or regional board shall petition the appropriate court for the issuance of a preliminary or permanent injunction, or both, as appropriate, restraining that person or persons from committing or continuing the violation. Subdivision (b) of Section 13331 shall be applicable to proceedings under this section.

*(Added by Stats. 1987, Ch. 1189; Amended by Stats. 1996, Ch. 659.)*

**13387.** (a) Any person who knowingly or negligently does any of the following is subject to criminal penalties as provided in subdivisions (b), (c), and (d):

(1) Violates Section 13375 or 13376.  
(2) Violates any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(3) Violates any order or prohibition issued pursuant to Section 13243 or 13301, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(4) Violates any requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1328, 1341, or 1345), as amended.

(5) Introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substances that the person knew or reasonably should have known could cause personal injury or property damage.

(6) Introduces any pollutant or hazardous substance into a sewer system or into a publicly owned treatment works, except in accordance with any applicable pretreatment requirements, which causes the treatment works to violate waste discharge requirements.

(b) Any person who negligently commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000), nor more than twenty-five thousand dollars (\$25,000), for each day in which the violation occurs, by imprisonment for not more than one year in a county jail, or by both that fine and imprisonment. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, subdivision (c), or subdivision (d), punishment shall be by a fine of not more than fifty thousand dollars (\$50,000) for each day in which the violation occurs, by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16, 20, or 24 months, or by both that fine and imprisonment.

(c) Any person who knowingly commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000), nor more than fifty thousand dollars (\$50,000), for each day in which the violation occurs, by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by both that fine and imprisonment. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision or subdivision (d), punishment shall be by a fine of not more than one hundred thousand dollars (\$100,000) for each day in which the violation occurs, by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years, or by both that fine and imprisonment.

(d) (1) Any person who knowingly commits any of the violations set forth in subdivision (a), and who knows at the time that the person thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be punished by a fine of not more than two hundred fifty thousand dollars (\$250,000), imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 5, 10, or 15 years, or by both that fine and imprisonment. A person that is an organization shall, upon conviction under this subdivision, be subject to a fine of not more than one million dollars (\$1,000,000). If a conviction

of a person is for a violation committed after a first conviction of the person under this subdivision, the punishment shall be by a fine of not more than five hundred thousand dollars (\$500,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 10, 20, or 30 years, or by both that fine and imprisonment. A person that is an organization shall, upon conviction for a violation committed after a first conviction of the person under this subdivision, be subject to a fine of not more than two million dollars (\$2,000,000). Any fines imposed pursuant to this subdivision shall be in addition to any fines imposed pursuant to subdivision (c).

(2) In determining whether a defendant who is an individual knew that the defendant's conduct placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for actual awareness or actual belief that the defendant possessed, and knowledge possessed by a person other than the defendant, but not by the defendant personally, cannot be attributed to the defendant.

(e) Any person who knowingly makes any false statement, representation, or certification in any record, report, plan, notice to comply, or other document filed with a regional board or the state board, or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required under this division shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16, 20, or 24 months, or by both that fine and imprisonment. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, punishment shall be by a fine of not more than twenty-five thousand dollars (\$25,000) per day of violation, by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years, or by both that fine and imprisonment.

(f) For purposes of this section, a single operational upset which leads to simultaneous violations of more than one pollutant mparameter shall be treated as a single violation.

(g) For purposes of this section, "organization," "serious bodily injury," "person," and "hazardous substance" shall have the same meaning as in Section 309(c) of the Clean Water Act (33 U.S.C. Sec. 1319(c)), as amended.

(h) (1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, fines collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (4) of subdivision (a) shall be deposited in the Water Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state, or for the purposes authorized in Section 13443.

*(Added by Stats. 1987, Ch. 1189; Amended by Stats. 1996, Ch. 775; Amended by Stats. 2001, Ch. 869; Amended by Stats. 2003, Ch. 683; Amended by Stats. 2004, Ch. 183; Amended by Stats. 2005, Ch. 22; Amended by Stats. 2006, Ch. 347; Amended by Stats. 2011, Ch. 15.)*

**CHAPTER 7.**  
**WATER RECLAMATION**

**Article 7.**  
**Water Reuse**

**13550.** (a) The Legislature hereby finds and declares that the use of potable domestic water for nonpotable uses, including, but not limited to, cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, is a waste or an unreasonable use of the water within the meaning of Section 2 of Article X of the California Constitution if recycled water is available which meets all of the following conditions, as determined by the state board, after notice to any person or entity who may be ordered to use recycled water or to cease using potable water and a hearing held pursuant to Article 2 (commencing with Section 648) of Chapter 1.5 of Division 3 of Title 23 of the California Code of Regulations:

(1) The source of recycled water is of adequate quality for these uses and is available for these uses. In determining adequate quality, the state board shall consider all relevant factors, including, but not limited to, food and employee safety, and level and types of specific constituents in the recycled water affecting these uses, on a user-by-user basis. In addition, the state board shall consider the effect of the use of recycled water in lieu of potable water on the generation of hazardous waste and on the quality of wastewater discharges subject to regional, state, or federal permits.

(2) The recycled water may be furnished for these uses at a reasonable cost to the user. In determining reasonable cost, the state board shall consider all relevant factors, including, but not limited to, the present and projected costs of supplying, delivering, and treating potable domestic water for these uses and the present and projected costs of supplying and delivering recycled water for these uses, and shall find that the cost of supplying the treated recycled water is comparable to, or less than, the cost of supplying potable domestic water.

(3) After concurrence with the State Department of Health Services, the use of recycled water from the proposed source will not be detrimental to public health.

(4) The use of recycled water for these uses will not adversely affect downstream water rights, will not degrade water quality, and is determined not to be injurious to plantlife, fish, and wildlife.

(b) In making the determination pursuant to subdivision (a), the state board shall consider the impact of the cost and quality of the nonpotable water on each individual user.

(c) The state board may require a public agency or person subject to this article to furnish information which the state board determines to be relevant to making the determination required in subdivision (a).

*(Amended by Stats. 1991, Ch. 553; Amended by Stats. 1995, Ch. 28.)*

**13551.** A person or public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, shall not use water from any source of quality suitable for potable domestic use for nonpotable

uses, including cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses if suitable recycled water is available as provided in Section 13550; however, any use of recycled water in lieu of water suitable for potable domestic use shall, to the extent of the recycled water so used, be deemed to constitute a reasonable beneficial use of that water and the use of recycled water shall not cause any loss or diminution of any existing water right.

*(Amended by Stats. 1991, Ch. 553; Amended by Stats. 1995, Ch. 28.)*

**13552.** The amendments to Sections 13550 and 13551 of the Water Code made during the first year of the 1991-92 Regular Session are not intended to alter any rights, remedies, or obligations which may exist prior to January 1, 1992, pursuant to, but not limited to, those sections or Chapter 8.5 (commencing with Section 1501) of Part 1 of Division 1 of the Public Utilities Code.

*(Added by Stats. 1991, Ch. 553.)*

**13552.2.** (a) The Legislature hereby finds and declares that the use of potable domestic water for the irrigation of residential landscaping is a waste or an unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if recycled water, for this use, is available to the residents and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(b) The state board may require a public agency or person subject to this section to submit information that the state board determines may be relevant in making the determination required in subdivision (a).

*(Added by Stats. 1993, Ch. 980; Amended by Stats. 1995, Ch. 28.)*

**13552.4.** (a) Any public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, may require the use of recycled water for irrigation of residential landscaping, if all of the following requirements are met:

(1) Recycled water, for this use, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(2) The use of recycled water does not cause any loss or diminution of any existing water right.

(3) The irrigation systems are constructed in accordance with Chapter 3 (commencing with Section 60301) of Division 4 of Title 22 of the California Code of Regulations.

(b) This section applies to both of the following:

(1) New subdivisions for which the building permit is issued on or after March 15, 1994, or, if a building permit is not required, new structures for which construction begins on or after March 15, 1994, for which the State Department of Public Health has approved the use of recycled water.

(2) Any residence that is retrofitted to permit the use of recycled water for landscape irrigation and for which the State Department of Public Health has approved the use of recycled water.

(c) (1) Division 13 (commencing with Section 21000) of the Public

Resources Code does not apply to any project that only involves the repiping, re-design, or use of recycled water for irrigation of residential landscaping necessary to comply with a requirement prescribed by a public agency under subdivision (a).

(2) The exemption in paragraph (1) does not apply to any project to develop recycled water, to construct conveyance facilities for recycled water, or any other project not specified in this subdivision.

*(Added by Stats. 1993, Ch. 980; Amended by Stats. 1995, Ch. 28; Amended by Stats. 2010, Ch. 288.)*

**13552.5.** (a) (1) On or before July 31, 2009, the state board shall adopt a general permit for landscape irrigation uses of recycled water for which the State Department of Public Health has established uniform statewide recycling criteria pursuant to Section 13521.

(2) The state board shall establish criteria to determine eligibility for coverage under the general permit.

(3) For the purpose of developing the general permit and establishing eligibility criteria to carry out paragraph (1), the state board shall hold at least one workshop and shall consult with and consider comments from the regional boards, groundwater management agencies and water replenishment districts with statutory authority to manage groundwater pursuant to their principal act, and any interested party.

(4) The general permit shall include language that provides for the modification of the terms and conditions of the general permit if a regulatory or statutory change occurs that affects the application of the general permit or as necessary to ensure protection of beneficial uses.

(b) The state board shall establish a reasonable schedule of fees to reimburse the state board for the costs it incurs in implementing, developing, and administering this section.

(c) Following the adoption of the general permit pursuant to this section, an applicant may obtain coverage for a landscape irrigation use of recycled water by filing a notice of intent to be covered under the general permit and submitting the appropriate fee established pursuant to subdivision (b) to the state board.

(d) Coverage under the general permit adopted pursuant to this section is effective if all of the following apply:

(1) The applicant has submitted a completed application.

(2) The state board has determined that the applicant meets the eligibility criteria established pursuant to paragraph (2) of subdivision (a).

(3) The state board has made the application available for public review and comment for 30 days.

(4) The state board has consulted with the appropriate regional board.

(5) The executive officer of the state board approves the application.

(e) (1) Except as provided by modification of the general permit, a person eligible for coverage under the general permit pursuant to subdivision (d) is not required to become or remain subject to individual waste discharge requirements or water reclamation requirements.

(2) For a landscape irrigation use of recycled water, a person who is subject to general or individual waste discharge requirements prescribed pursuant to Section 13263 or 13377, or is subject to individual or master water reclama-

tion requirements prescribed pursuant to Section 13523 or 13523.1, may apply for coverage under the general permit adopted pursuant to this section in lieu of remaining subject to requirements prescribed pursuant to those sections.

(f) (1) The state board shall designate an ombudsperson to coordinate and facilitate communication on recycled water, on the issuance of water reclamation requirements or waste discharge requirements, as applicable, pursuant to Section 13523 or 13523.1 or this section, and on the promotion of water recycling while ensuring reasonable protection of water quality in accordance with applicable provisions of state and federal water quality law.

(2) The person appointed pursuant to paragraph (1) shall facilitate consultations between the state board and the regional boards relating to matters described in that paragraph.

*(Added by Stats. 2007, Ch. 535.)*

**13552.6.** (a) The Legislature hereby finds and declares that the use of potable domestic water for floor trap priming, cooling towers, and air-conditioning devices is a waste or an unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if recycled water, for these uses, is available to the user, and the water meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(b) The state board may require a public agency or person subject to this section to submit information that the state board determines may be relevant in making the determination required in subdivision (a).

*(Added by Stats. 1993, Ch. 980; Amended by Stats. 1995, Ch. 28.)*

**13552.8.** (a) Any public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, may require the use of recycled water in floor trap priming, cooling towers, and air-conditioning devices, if all of the following requirements are met:

(1) Recycled water, for these uses, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(2) The use of recycled water does not cause any loss or diminution of any existing water right.

(3) If public exposure to aerosols, mist, or spray may occur, appropriate mist mitigation or mist control is provided, such as the use of mist arrestors or the addition of biocides to the water in accordance with criteria established pursuant to Section 13521.

(4) The person intending to use recycled water has prepared an engineering report pursuant to Section 60323 of Title 22 of the California Code of Regulations that includes plumbing design, cross-connection control, and monitoring requirements for the public agency, which are in compliance with criteria established pursuant to Section 13521.

(b) This section applies to both of the following:

(1) New industrial facilities and subdivisions for which the building permit is issued on or after March 15, 1994, or, if a building permit is not required, new structures for which construction begins on or after March 15, 1994, for which the State Department of Health Services has approved the use of recycled water.

(2) Any structure that is retrofitted to permit the use of recycled water for floor traps, cooling towers, or air-conditioning devices, for which the State Department of Health Services has approved the use of recycled water.

(c) (1) Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to any project which only involves the repiping, redesign, or use of recycled water for floor trap priming, cooling towers, or air-conditioning devices necessary to comply with a requirement prescribed by a public agency under subdivision (a).

(2) The exemption in paragraph (1) does not apply to any project to develop recycled water, to construct conveyance facilities for recycled water, or any other project not specified in this subdivision.

*(Added by Stats. 1993, Ch. 980; Amended by Stats. 1995, Ch. 28.)*

**13553.** (a) The Legislature hereby finds and declares that the use of potable domestic water for toilet and urinal flushing in structures is a waste or an unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if recycled water, for these uses, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(b) The state board may require a public agency or person subject to this section to furnish any information that may be relevant to making the determination required in subdivision (a).

(c) For purposes of this section and Section 13554, “structure” or “structures” means commercial, retail, and office buildings, theaters, auditoriums, condominium projects, schools, hotels, apartments, barracks, dormitories, jails, prisons, and reformatories, and other structures as determined by the State Department of Public Health.

(d) Recycled water may be used in condominium projects, as defined in Section 1351 of the Civil Code, subject to all of the following conditions:

(1) Prior to the indoor use of recycled water in any condominium project, the agency delivering the recycled water to the condominium project shall file a report with, and receive written approval of the report from, the State Department of Public Health. The report shall be consistent with the provisions of Title 22 of the California Code of Regulations generally applicable to dual-plumbed structures and shall include all the following:

(A) That potable water service to each condominium project will be provided with a backflow protection device approved by the State Department of Public Health to protect the agency’s public water system, as defined in Section 116275 of the Health and Safety Code.

The backflow protection device approved by the State Department of Public Health shall be inspected and tested annually by a person certified in the inspection of backflow prevention devices.

(B) That any plumbing modifications in the condominium unit or any physical alteration of the structure will be done in compliance with state and local plumbing codes.

(C) That each condominium project will be tested by the recycled water agency or the responsible local agency at least once every four years to ensure that

there are no indications of a possible cross connection between the condominium's potable and nonpotable systems.

(D) That recycled water lines will be color coded consistent with current statutes and regulations.

(2) The recycled water agency or the responsible local agency shall maintain records of all tests and annual inspections conducted.

(3) The condominium's declaration, as defined in Section 1351 of the Civil Code, shall provide that the laws and regulations governing recycled water apply, shall not permit any exceptions to those laws and regulations, shall incorporate the report described in paragraph (1), and shall contain the following statement:

### **NOTICE OF USE OF RECYCLED WATER**

This property is approved by the State Department of Public Health for the use of recycled water for toilet and urinal flushing. This water is not potable, is not suitable for indoor purposes other than toilet and urinal flushing purposes, and requires dual plumbing. Alterations and modifications to the plumbing system require a permit and are prohibited without first consulting with the appropriate local building code enforcement agency and your property management company or homeowners' association to ensure that the recycled water is not mixed with the drinking water."

(e) The State Department of Public Health may adopt regulations as necessary to assist in the implementation of this section.

(f) This section shall only apply to condominium projects that are created, within the meaning of Section 1352 of the Civil Code, on or after January 1, 2008.

(g) This section and Section 13554 do not apply to a pilot program adopted pursuant to Section 13553.1.

*(Added by Stats. 1991, Ch. 723; Amended by Stats. 1995, Ch. 28; Amended by Stats. 1997, Ch. 149; Amended by Stats. 2007, Ch. 537; Amended by Stats. 2010, Ch. 288)*

**13553.1.** (a) The Legislature hereby finds and declares that certain coastal areas of the state have been using sea water to flush toilets and urinals as a means of conserving potable water; that this practice precludes the beneficial reuse of treated wastewater and has had a deleterious effect on the proper wastewater treatment process, and has led to corrosion of the sea water distribution pipelines and wastewater collection systems; and that this situation must be changed.

(b) There is a need for a pilot program to demonstrate that conversion to the use of recycled water in residential buildings for toilet and urinal flushing does not pose a threat to public health and safety.

(c) A city that is providing a separate distribution system for sea water for use in flushing toilets and urinals in residential structures may, by ordinance, authorize the use of recycled water for the flushing of toilets and urinals in residential structures if the level of treatment and the use of the recycled water meets the criteria set by the State Department of Health Services.

*(Added by Stats. 1995, Ch. 78.)*

**13554.** (a) Any public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, may require the use of recycled water for toilet and urinal flushing in structures, except a mental hospital or other facility operated by a public agency for the treatment of persons with mental disorders, if all of the following requirements are met:

(1) Recycled water, for these uses, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(2) The use of recycled water does not cause any loss or diminution of any existing water right.

(3) The public agency has prepared an engineering report pursuant to Section 60323 of Title 22 of the California Code of Regulations that includes plumbing design, cross-connection control, and monitoring requirements for the use site, which are in compliance with criteria established pursuant to Section 13521.

(b) This section applies only to either of the following:

(1) New structures for which the building permit is issued on or after March 15, 1992, or, if a building permit is not required, new structures for which construction begins on or after March 15, 1992.

(2) Any construction pursuant to subdivision (a) for which the State Department of Health Services has, prior to January 1, 1992, approved the use of recycled water.

(c) Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to any project which only involves the repiping, redesign, or use of recycled water by a structure necessary to comply with a requirement issued by a public agency under subdivision (a). This exemption does not apply to any project to develop recycled water, to construct conveyance facilities for recycled water, or any other project not specified in this subdivision.

*(Added by Stats. 1991, Ch. 723; Amended by Stats. 1995, Ch. 28; and Stats. 1997, Ch. 149.)*

**13554.2.** (a) Any person or entity proposing the use of recycled water shall reimburse the State Department of Health Services for reasonable costs that department actually incurs in performing duties pursuant to this chapter.

(b) (1) Upon a request from the person or entity proposing the use of recycled water, the State Department of Health Services shall, within a reasonable time after the receipt of the request, provide an estimate of the costs that it will reasonably incur in the performance of its duties pursuant to this chapter.

(2) For purposes of implementing subdivision (a), that department shall maintain a record of its costs. In determining those costs, that department may consider costs that include, but are not limited to, costs relating to personnel requirements, materials, travel, and office overhead. The amount of reimbursement shall be equal to, and may not exceed, that department's actual costs.

(c) With the consent of the person or entity proposing the use of recycled water, the State Department of Health Services may delegate all or part of the duties that department performs pursuant to this chapter within a county to a local health agency authorized by the board of supervisors to assume these duties, if, in the judgment of that department, the local health agency can perform these

duties. Any person or entity proposing the use of recycled water shall reimburse the local health agency for reasonable costs that the local health agency actually incurs in the performance of its duties delegated pursuant to this subdivision.

(d) (1) Upon a request from the person or entity proposing the use of recycled water, the local health agency shall, within a reasonable time after the receipt of the request, provide an estimate of the cost it will reasonably incur in the performance of its duties delegated under subdivision (c).

(2) The local health agency, if delegated duties pursuant to subdivision (c), shall maintain a record of its costs that include, but is not limited to, costs relating to personnel requirements, materials, travel, and office overhead. The amount of reimbursement shall be equal to, and may not exceed, the local health agency's actual costs.

(e) The State Department of Health Services or local health agency shall complete its review of a proposed use of recycled water within a reasonable period of time. That department shall submit to the person or entity proposing the use of recycled water a written determination as to whether the proposal submitted is complete for purposes of review within 30 days from the date of receipt of the proposal and shall approve or disapprove the proposed use within 30 days from the date on which that department determines that the proposal is complete.

(f) An invoice for reimbursement of services rendered shall be submitted to the person or entity proposing the use of recycled water subsequent to completion of review of the proposed use, or other services rendered, that specifies the number of hours spent by the State Department of Health Services or local health agency, specific tasks performed, and other costs actually incurred. Supporting documentation, including receipts, logs, timesheets, and other standard accounting documents, shall be maintained by that department or local health agency and copies, upon request, shall be provided to the person or entity proposing the use of recycled water.

(g) For the purposes of this section, "person or entity proposing the use of recycled water" means the producer or distributor of recycled water submitting a proposal to the department.

*(Amended by Stats. 1993, Ch. 980; Amended by Stats. 1994, Ch. 347.)*

**13554.3.** The State Water Resources Control Board may establish a reasonable schedule of fees by which it is reimbursed for the costs it incurs pursuant to Section 13553 and 13554.

*(Added by Stats. 1991, Ch. 723.)*

**13555.2.** The Legislature hereby finds and declares that many local agencies deliver recycled water for nonpotable uses and that the use of recycled water is an effective means of meeting the demands for new water caused by drought conditions or population increases in the state. It is the intent of the Legislature to encourage the design and construction of water delivery systems on private property that deliver water for both potable and nonpotable uses in separate pipelines.

*(Added by Stats. 1992, Ch. 418; Amended by Stats. 1995, Ch. 28.)*

**13555.3.** (a) Water delivery systems on private property that could deliver recycled water for nonpotable uses described in Section 13550, that are constructed on and after January 1, 1993, shall be designed to ensure that the water to be used for only potable domestic uses is delivered, from the point of entry to the private property to be served, in a separate pipeline which is not used to deliver the recycled water.

(b) This section applies to water delivery systems on private property constructed within either of the following jurisdictions:

(1) One that has an urban water management plan that includes the intent to develop recycled water use.

(2) One that does not have an urban water management plan that includes recycled water use, but that is within five miles of a jurisdiction that does have an urban water management plan that includes recycled water use, and has indicated a willingness to serve the water delivery system.

(c) This section does not preempt local regulation of the delivery of water for potable and nonpotable uses and any local governing body may adopt requirements which are more restrictive than the requirements of this section.

*(Added by Stats. 1992, Ch. 418; Amended by Stats. 1995, Ch. 28.)*

**13555.5.** (a) If a recycled water producer determines that within 10 years the recycled water producer proposes to provide recycled water for use for state landscape irrigation that meets all of the conditions set forth in Section 13550, the recycled water producer shall so notify the Department of Transportation and the Department of General Services, and shall identify in the notice the area that is eligible to receive the recycled water, and the necessary infrastructure that the recycled water producer or the retail water supplier proposes to provide, to facilitate delivery of the recycled water.

(b) If notice has been provided pursuant to subdivision (a), all pipe installed by the Department of Transportation or the Department of General Services for landscape irrigation within the identified area shall be of the type necessary to meet the requirements of Section 116815 of the Health and Safety Code and applicable regulations.

*(Added by Stats. 2006, Ch. 541.)*

**13556.** In addition to any other authority provided in law, any water supplier described in subdivision (b) of Section 1745 may acquire, store, provide, sell, and deliver recycled water for any beneficial use, including, but not limited to, municipal, industrial, domestic, and irrigation uses, if the water use is in accordance with statewide recycling criteria and regulations established pursuant to this chapter.

*(Added by Stats. 1993, Ch. 53; Amended by Stats. 1995, Ch. 28.)*

## **CHAPTER 7.5.**

### **WATER RECYCLING ACT OF 1991**

**13575.** (a) This chapter shall be known and may be cited as the Water Recycling Act of 1991.

(b) As used in this chapter, the following terms have the following meanings:

(1) “Customer” means a person or entity that purchases water from a retail water supplier.

(2) “Entity responsible for groundwater replenishment” means any person or entity authorized by statute or court order to manage a groundwater basin and acquire water for groundwater replenishment.

(3) “Recycled water” has the same meaning as defined in subdivision (n) of Section 13050.

(4) “Recycled water producer” means any local public entity that produces recycled water.

(5) “Recycled water wholesaler” means any local public entity that distributes recycled water to retail water suppliers and which has constructed, or is constructing, a recycled water distribution system.

(6) “Retail water supplier” means any local entity, including a public agency, city, county, or private water company, that provides retail water service.

(7) “Retailer” means the retail water supplier in whose service area is located the property to which a customer requests the delivery of recycled water service.

*(Amended by Stats. 1994, Ch. 733; Amended by Stats. 1998, Ch. 753)*

**13576.** The Legislature hereby makes the following findings and declarations:

(a) The State of California is subject to periodic drought conditions.

(b) The development of traditional water resources in California has not kept pace with the state’s population, which is growing at the rate of over 700,000 per year and which is anticipated to reach 36,000,000 by the year 2010.

(c) There is a need for a reliable source of water for uses not related to the supply of potable water to protect investments in agriculture, greenbelts, and recreation and to replenish groundwater basins, and protect and enhance fisheries, wildlife habitat, and riparian areas.

(d) The environmental benefits of recycled water include a reduced demand for water in the Sacramento-San Joaquin Delta that is otherwise needed to maintain water quality, reduced discharge of waste into the ocean, and the enhancement of groundwater basins, recreation, fisheries, and wetlands.

(e) The use of recycled water has proven to be safe from a public health standpoint, and the State Department of Public Health is updating regulations for the use of recycled water.

(f) The use of recycled water is a cost-effective, reliable method of helping to meet California’s water supply needs.

(g) The development of the infrastructure to distribute recycled water will provide jobs and enhance the economy of the state.

(h) Retail water suppliers and recycled water producers and wholesalers should promote the substitution of recycled water for potable water and imported water in order to maximize the appropriate cost-effective use of recycled water in California.

(i) Recycled water producers, retail water suppliers, and entities responsible for groundwater replenishment should cooperate in joint technical, economic, and environmental studies, as appropriate, to determine the feasibility of providing recycled water service.

(j) Retail water suppliers and recycled water producers and wholesalers should be encouraged to enter into contracts to facilitate the service of recycled and potable water by the retail water suppliers in their service areas in the most efficient and cost-effective manner.

(k) Recycled water producers and wholesalers and entities responsible for groundwater replenishment should be encouraged to enter into contracts to facilitate the use of recycled water for groundwater replenishment if recycled water is available and the authorities having jurisdiction approve its use.

(l) Wholesale prices set by recycled water producers and recycled water wholesalers, and rates that retail water suppliers are authorized to charge for recycled water, should reflect an equitable sharing of the costs and benefits associated with the development and use of recycled water.

*(Amended by Stats. 1994, Ch. 733; Amended 1998, Ch. 164; Amended by Stats. 2010, Ch. 288)*

**13577.** This chapter establishes a statewide goal to recycle a total of 700,000 acre-feet of water per year by the year 2000 and 1,000,000 acre-feet of water per year by the year 2010.

**13578.** (a) In order to achieve the statewide goal for recycled water use established in Section 13577 and to implement the Governor's Advisory Drought Planning Panel Critical Water Shortage Contingency Plan recommendations, Section F2, as submitted December 29, 2000, the department shall identify and report to the Legislature on opportunities for increasing the use of recycled water, as defined in paragraph (3) of subdivision (b) of Section 13575, and identify constraints and impediments, including the level of state financial assistance available for project construction, to increasing the use of recycled water.

(b) The department shall convene a task force, to be known as the 2002 Recycled Water Task Force, to advise the department in implementation of subdivision (a), including making recommendations to the Legislature regarding the following:

(1) How to further the use of recycled water in industrial and commercial applications, including, but not limited to, those applications set forth in Section 13552.8. The task force shall evaluate the current regulatory framework of state and local rules, regulations, ordinances, and permits to identify the obstacles and disincentives to industrial and commercial reuse. Issues to be investigated include, but are not limited to, applicability of visual inspections instead of pressure tests for cross-connections between potable and nonpotable water systems, dual piping trenching restrictions, fire suppression system design, and backflow protections.

(2) Changes in the Uniform Plumbing Code, published by the International Association of Plumbing and Mechanical Officials, that are appropriate to facilitate the use of recycled water in industrial and commercial settings. The department shall make recommendations to the California Building Standards Commission with regard to suggested revisions to the California Plumbing Code necessary to incorporate the changes identified by the task force.

(3) Changes in state statutes or the current regulatory framework of state

and local rules, regulations, ordinances, and permits appropriate to increase the use of recycled water for commercial laundries and toilet and urinal flushing in structures including, but not limited to, those defined in subdivision (c) of Section 13553. The department shall identify financial incentives to help offset the cost of retrofitting privately and publicly owned structures.

(4) The need to reconvene the California Potable Reuse Committee established by the department in 1993 or convene a successor committee to update the committee's finding that planned indirect potable reuse of recycled water by augmentation of surface water supplies would not adversely affect drinking water quality if certain conditions were met.

(5) The need to augment state water supplies using water use efficiency strategies identified in the CALFED Bay-Delta Program. In its report pursuant to subdivision (a), the department shall identify ways to coordinate with CALFED to assist local communities in educating the public with regard to the statewide water supply benefits of local recycling projects and the level of public health protection ensured by compliance with the uniform statewide water recycling criteria developed by the State Department of Public Health in accordance with Section 13521.

(6) Impediments or constraints, other than water rights, related to increasing the use of recycled water in applications for agricultural, environmental, or irrigation uses, as determined by the department.

(c) (1) The task force shall be convened by the department and be comprised of one representative from each of the following state agencies:

- (A) The department.
- (B) The State Department of Public Health.
- (C) The state board.
- (D) The California Environmental Protection Agency.
- (E) The CALFED Bay-Delta Program.
- (F) The Department of Food and Agriculture.
- (G) The California Building Standards Commission.
- (H) The University of California.
- (I) The Natural Resources Agency.

(2) The task force shall also include one representative from a recognized environmental advocacy group and one representative from a consumer advocacy group, as determined by the department, and one representative of local agency health officers, one representative of urban water wholesalers, one representative from a groundwater management entity, one representative of water districts, one representative from a nonprofit association of public and private members created to further the use of recycled water, one representative of commercial real estate, one representative of land development, one representative of industrial interests, and at least two representatives from each of the following as defined in Section 13575:

- (A) Recycled water producer.
- (B) Recycled water wholesaler.
- (C) Retail water supplier.

(d) The department and the task force shall report to the Legislature not later than July 1, 2003.

(e) The department shall carry out the duties of this section only to the extent that funds pursuant to Section 79145, enacted as part of the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act (Division 26 (commencing with Section 79000)), are made available for the purposes of this section.

*(Added by Stats. 2001, Ch. 590; Amended by Stats. 2010, Ch. 288)*

**13579.** (a) In order to achieve the goals established in Section 13577, retail water suppliers shall identify potential uses for recycled water within their service areas, potential customers for recycled water service within their service areas, and, within a reasonable time, potential sources of recycled water.

(b) Recycled water producers and recycled water wholesalers may also identify potential uses for recycled water, and may assist retail water suppliers in identifying potential customers for recycled water service within the service areas of those retail water suppliers.

(c) Recycled water producers, retail water suppliers, and entities responsible for groundwater replenishment may cooperate in joint technical, economic, and environmental studies, as appropriate, to determine the feasibility of providing recycled water service and recycled water for groundwater replenishment consistent with the criteria set forth in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 13550 and in accordance with Section 60320 of Title 22 of the California Code of Regulations.

*(Added by Stats. 1994, Ch. 733; Amended 1998, Ch. 164)*

**13580.** (a) A retail water supplier that has identified a potential use or customer pursuant to Section 13579 may apply to a recycled water producer or recycled water wholesaler for a recycled water supply.

(b) A recycled water producer or recycled water wholesaler that has identified a potential use or customer pursuant to Section 13579 may, in writing, request a retail water supplier to enter into an agreement to provide recycled water to the potential customer.

(c) A customer may request, in writing, a retailer to enter into an agreement to provide recycled water to the customer.

(d) (1) An entity responsible for groundwater replenishment that is a customer of a retail water supplier and that has identified the potential use of recycled water for groundwater replenishment purposes may, in writing, request that retail water supplier to enter into an agreement to provide recycled water for that purpose. That entity may not obtain recycled water for that purpose from a recycled water producer, a recycled water wholesaler, or another retail water supplier without the agreement of the entity's retail water supplier.

(2) An entity responsible for groundwater replenishment that is not a customer of a retail water supplier and that has identified the potential use of recycled water for groundwater replenishment purposes may, in writing, request a retail water supplier, a recycled water producer, or a recycled water wholesaler to enter into an agreement to provide recycled water for that purpose.

*(Added by Stats. 1994, Ch. 733; Amended by Stats. 1998, Ch. 753)*

**13580.5.** (a) (1) Subject to subdivision (e) of Section 13580.7, a retail water supplier that receives a request from a customer pursuant to subdivision (c) of

Section 13580 shall enter into an agreement to provide recycled water, if recycled water is available, or can be made available, to the retail water supplier for sale to the customer.

(2) Notwithstanding paragraph (1), in accordance with a written agreement between a recycled water producer or a recycled water wholesaler and a retail water supplier, the retail water supplier may delegate to a recycled water producer or a recycled water wholesaler its responsibility under this section to provide recycled water.

(b) A customer may not obtain recycled water from a recycled water producer, a recycled water wholesaler, or a retail water supplier that is not the retailer without the agreement of the retailer.

(c) If either a recycled water producer or a recycled water wholesaler provides a customer of a retail water supplier with a written statement that it can and will provide recycled water to the retailer, the retail water supplier shall, not later than 120 days from the date on which the retail water supplier receives the written statement from the customer, by certified mail, return receipt requested, submit a written offer to the customer. A determination of availability pursuant to Section 13550 is not required.

(d) If the state board pursuant to Section 13550 makes a determination that there is available recycled water to serve a customer of a retail water supplier, the retail water supplier, not later than 120 days from the date on which the retail water supplier receives a copy of that determination from the customer, by certified mail, return receipt requested, shall submit a written offer to the customer.

*(Added by Stats. 1998, Ch. 753, Amended by Stats. 1999, Ch. 173.)*

**13580.7.** (a) This section applies only to a retail water supplier that is a public agency.

(b) A customer may request, in writing, a retail water supplier to enter into an agreement or adopt recycled water rates in order to provide recycled water service to the customer. The retail water supplier, by certified mail return receipt requested, shall submit a written offer to the customer not later than 120 days from the date on which the retail water supplier receives the written request from the customer.

(c) If no rate is in effect for recycled water service within the service area of a retail water supplier, the rate and conditions for recycled water service shall be established by contract between the retail water supplier and the customer, not later than 120 days from the date on which the customer requests a contract, or, by resolution or ordinance by the retail water supplier, not later than 120 days from the date on which the retail water supplier receives the customer's written request for an ordinance or resolution.

(d) A rate for recycled water service established by contract, ordinance, or resolution, shall reflect a reasonable relationship between the amount of the rate and the retail cost of obtaining or producing the recycled water, the cost of conveying the recycled water, and overhead expenses for providing recycled water service. Capital costs of facilities required to serve the customer shall be amortized over the economic life of the facility, or the length of time the customer agrees to purchase recycled water, whichever is less. The rate shall not exceed the estimated reasonable cost of providing the service, and any additional costs agreed to by the customer for recycled water supplemental treatment.

(e) The rate for recycled water shall be comparable to, or less than, the retail water supplier's rate for potable water. If recycled water service cannot be provided at a rate comparable to, or less than, the rate for potable water, the retail water supplier is not required to provide the recycled water service, unless the customer agrees to pay a rate that reimburses the retail water supplier for the costs described in subdivision (c).

(f) The offer required by subdivisions (c) and (d) of Section 13580.5 shall identify all of the following:

- (1) The source for the recycled water.
- (2) The method of conveying the recycled water.
- (3) A schedule for delivery of the recycled water.
- (4) The terms of service.
- (5) The rate for the recycled water, including the per-unit cost for that water.

(6) The costs necessary to provide service and the basis for determining those costs.

(g) This section does not apply to recycled water service rates established before January 1, 1999, or any amendments to those rates.

*(Added by Stats. 1998, Ch. 753, Amended by Stats. 1999, Ch. 173.)*

**13580.8.** (a) This section applies only to a retail water supplier that is regulated by the Public Utilities Commission.

(b) Rates for recycled water that is provided to the customer by a retail water supplier regulated by the Public Utilities Commission shall be established by the commission pursuant to Section 455.1 of the Public Utilities Code. A regulated water utility may request the commission to establish the rate or rates for the delivery of recycled or nonpotable water, with the objective of providing, where practicable, a reasonable economic incentive for the customer to purchase recycled or nonpotable water in place of potable water.

(c) A regulated water utility may propose a rate or rates for recycled or nonpotable water by tariff or by contract between the retail water supplier and the customer. Where the rate or rates are set by contract, the water utility and its customer shall meet, confer, and negotiate in good faith to establish a contract rate.

(d) The commission shall, as appropriate, provide a discount from the general metered rate of the water utility for potable water by either of the following means:

- (1) Passing through to the customer the net reduction in cost to the water utility in purchasing and delivering recycled or nonpotable water as compared to the cost of purchasing and delivering potable water.

- (2) Granting to the customer a uniform discount from the water utility's general metered potable water rate when the discount in paragraph (1) is determined to be an insufficient incentive for the customer to convert to the use of recycled or nonpotable water. If the commission provides for a discount pursuant to this paragraph that is greater than the water utility's reduction in cost, the commission shall authorize the water utility to include the aggregate amount of that discount in its revenue requirements to be applied to, and recovered in, rates that are applicable to all general metered customers.

*(Added by Stats. 1998, Ch. 753)*

**13580.9.** (a) Notwithstanding any other provision of law, and except as otherwise previously provided for in a contract agreed to by the customer and the City of West Covina, if the purchaser, contractor, or lessee of, or successor to, all or a portion of the water utility owned by the City of West Covina is a retail water supplier that is regulated by the Public Utilities Commission, rates for recycled or nonpotable water service to a closed hazardous waste and solid waste facility located within the boundaries of the City of West Covina for the purposes of irrigation, recreation, or dust suppression or any other use at that facility shall be established in accordance with subdivisions (a) to (e), inclusive, of Section 13580.7, and if there is a failure to agree on the terms and conditions of a recycled or nonpotable water supply agreement for the delivery of water for those purposes by that purchaser, contractor, lessee, or successor, Section 13581 shall apply.

(b) For the purpose of this section, nonpotable water that is not the result of the treatment of waste shall be treated as the equivalent of recycled water if it is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefor considered a valuable resource, if the use of that water will not adversely affect downstream water rights, degrade water quality, or be injurious to plant life, fish, or wildlife, as provided by statute or by regulations of the State Department of Health Services and the state board or a regional board, as appropriate.

*(Added by Stats. 1998, Ch. 753)*

**13581.** (a) If there is a failure to agree on terms and conditions of a recycled water supply agreement involving a retail water supplier that is a public agency within 180 days from the date of the receipt of a request for recycled water pursuant to subdivision (c) of Section 13580, a written statement pursuant to subdivision (c) of Section 13580.5, or a determination of availability pursuant to subdivision (d) of Section 13580.5, any party may request a formal mediation process. The parties shall commence mediation within 60 days after the mediation request is made. If the parties cannot agree on a mediator, the director shall appoint a mediator. The mediator may recommend to the parties appropriate terms and conditions applicable to the service of recycled water. The cost for the services of the mediator shall be divided equally among the parties to the mediation and shall not exceed twenty thousand dollars (\$20,000).

(b) If the parties in mediation reach agreement, both parties together shall draft the contract for the recycled water service. The parties shall sign the contract within 30 days.

(c) If the parties in mediation fail to reach agreement, the affected retail water supplier shall, within 30 days, by resolution or ordinance, adopt a rate for recycled water service. The agency action shall be subject to validating proceedings pursuant to Chapter 9 (commencing with Section 860) of Part 2 of Title 10 of the Code of Civil Procedure, except that there shall not be a presumption in favor of the retail water supplier under the action taken to set the rate for recycled water service. The mediator shall file a report with the superior court setting forth the recommendations provided to the parties regarding appropriate terms and conditions applicable to the service of recycled water. Each party shall bear its own costs and attorney's fees.

*(Added by Stats. 1994, Ch. 733; Amended by Stats. 1998, Ch. 753)*

**13581.2.** If the retail water supplier is regulated by the Public Utilities Commission, and there is a failure to agree on terms and conditions of a recycle water supply agreement with a customer within 180 days from the date of the receipt of a request for recycled water pursuant to subdivision (c) of Section 13580, a written statement pursuant to subdivision (c) of Section 13580.5, or a determination of availability pursuant to subdivision (d) of Section 13580.5, the matter shall be submitted to the Public Utilities Commission for resolution, and the commission shall determine a contract rate or rates for recycled water as provided in Section 13580.8.

*(Added by Stats. 1998, Ch. 753)*

**13582.** This chapter is not intended to alter either of the following:

(a) Any rights, remedies, or obligations which may exist pursuant to Article 1.5 (commencing with Section 1210) of Chapter 1 of Part 2 of Division 2 of this code or Chapter 8.5 (commencing with Section 1501) of Part 1 of Division 1 of the Public Utilities Code.

(b) Any rates established or contracts entered into prior to January 1, 1999.

*(Added by Stats. 1994, Ch. 733; Amended 1998, Ch. 753)*

**13583.** (a) If a retail water supplier that is a public agency does not comply with this chapter, the customer may petition a court for a writ of mandate pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure.

(b) If a retail water supplier is regulated by the Public Utilities Commission and does not comply with this chapter, the Public Utilities Commission may order the retailer to comply with this chapter after receiving a petition from the customer specifying the provisions of this chapter with which the retailer has failed to comply.

*(Added by Stats. 1998, Ch. 753)*

## **DIVISION 35 SACRAMENTO-SAN JOAQUIN DELTA REFORM ACT OF 2009\***

### **PART 1. GENERAL PROVISIONS**

*(Added by Stats. 2009, 7th Ex. Sess, Ch. 5)*

\* *Repeals Sections 79400 to 79475.*

### **CHAPTER 1. SHORT TITLE AND LEGISLATIVE FINDINGS**

**85000.** This division shall be known, and may be cited, as the Sacramento-San Joaquin Delta Reform Act of 2009.

**85001.** The Legislature finds and declares all of the following:

(a) The Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable. Resolving the crisis requires fundamental reorganization of the state's management of Delta watershed resources.

(b) In response to the Delta crisis, the Legislature and the Governor required development of a new long-term strategic vision for managing the Delta. The Governor appointed a Blue Ribbon Task Force to recommend a new "Delta Vision Strategic Plan" to his cabinet committee, which, in turn, made recommendations for a Delta Vision to the Governor and the Legislature on January 3, 2009.

(c) By enacting this division, it is the intent of the Legislature to provide for the sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water supply for the state, to protect and enhance the quality of water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan.

**85002.** The Legislature finds and declares that the Sacramento-San Joaquin Delta, referred to as "the Delta" in this division, is a critically important natural resource for California and the nation. It serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America.

**85003.** The Legislature finds and declares all of the following:

(a) Originally, the Delta was a shallow wetland with water covering the area for many months of the year. Natural levees, created by deposits of sediment, allowed some islands to emerge during the dry summer months. Salinity would fluctuate, depending on the season and the amount of precipitation in any one year, and the species that comprised the Delta ecosystem had evolved and adapted to this unique, dynamic system.

(b) Delta property ownership developed pursuant to the federal Swamp Land Act of 1850, and state legislation enacted in 1861, and as a result of the construction of levees to keep previously seasonal wetlands dry throughout the year. That property ownership, and the exercise of associated rights, continue to depend on the landowners' maintenance of those nonproject levees and do not include any right to state funding of levee maintenance or repair.

(c) In 1933, the Legislature approved the California Central Valley Project Act, which relied upon the transfer of Sacramento River water south through the Delta and maintenance of a more constant salinity regime by using upstream reservoir releases of freshwater to create a hydraulic salinity barrier. As a result of the operations of state and federal water projects, the natural salinity variations in the Delta have been altered. Restoring a healthy estuarine ecosystem in the Delta may require developing a more natural salinity regime in parts of the Delta.

**85004.** The Legislature finds and declares all of the following:

(a) The economies of major regions of the state depend on the ability to use water within the Delta watershed or to import water from the Delta watershed.

More than two-thirds of the residents of the state and more than two million acres of highly productive farmland receive water exported from the Delta watershed.

(b) Providing a more reliable water supply for the state involves implementation of water use efficiency and conservation projects, wastewater reclamation projects, desalination, and new and improved infrastructure, including water storage and Delta conveyance facilities.

## CHAPTER 2. DELTA POLICY

**85020.** The policy of the State of California is to achieve the following objectives that the Legislature declares are inherent in the coequal goals for management of the Delta:

(a) Manage the Delta's water and environmental resources and the water resources of the state over the long term.

(b) Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.

(c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.

(d) Promote statewide water conservation, water use efficiency, and sustainable water use.

(e) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.

(f) Improve the water conveyance system and expand statewide water storage.

(g) Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection.

(h) Establish a new governance structure with the authority, responsibility, accountability, scientific support, and adequate and secure funding to achieve these objectives.

**85021.** The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.

**85022.** (a) It is the intent of the Legislature that state and local land use actions identified as "covered actions" pursuant to Section 85057.5 be consistent with the Delta Plan. This section's findings, policies, and goals apply to Delta land use planning and development.

(b) The actions of the council shall be guided by the findings, policies, and goals expressed in this section when reviewing decisions of the commission pursuant to Division 19.5 (commencing with Section 29700) of the Public Resources Code.

(c) The Legislature finds and declares all of the following:

(1) The Delta is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced estuary and wetland ecosystem of hemispheric importance.

(2) The permanent protection of the Delta's natural and scenic resources is the paramount concern to present and future residents of the state and nation.

(3) To promote the public safety, health, and welfare, and to protect public and private property, wildlife, fisheries, and the natural environment, it is necessary to protect and enhance the ecosystem of the Delta and prevent its further deterioration and destruction.

(4) Existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to persons living and working in the Delta.

(d) The fundamental goals for managing land use in the Delta are to do all of the following:

(1) Protect, maintain, enhance, and, where feasible, restore the overall quality of the Delta environment and its natural and artificial resources.

(2) Ensure the utilization and conservation of Delta resources, taking into account the social and economic needs of the people of the state.

(3) Maximize public access to Delta resources and maximize public recreational opportunities in the Delta consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

(4) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the Delta.

(5) Develop new or improved aquatic and terrestrial habitat and protect existing habitats to advance the goal of restoring and enhancing the Delta ecosystem.

(6) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.

**85023.** The longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta.

### CHAPTER 3. MISCELLANEOUS PROVISIONS

**85031.** (a) This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law. This division does not limit or otherwise affect the application of Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive.

(b) For the purposes of this division, an area that utilizes water that has been diverted and conveyed from the Sacramento River hydrologic region, for use

outside the Sacramento River hydrologic region or the Delta, shall not be deemed to be immediately adjacent thereto or capable of being conveniently supplied with water therefrom by virtue or on account of the diversion and conveyance of that water through facilities that may be constructed for that purpose after January 1, 2010.

(c) Nothing in this division supersedes, limits, or otherwise modifies the applicability of Chapter 10 (commencing with Section 1700) of Part 2 of Division 2, including petitions related to any new conveyance constructed or operated in accordance with Chapter 2 (commencing with Section 85320) of Part 4.

(d) Unless otherwise expressly provided, nothing in this division supersedes, reduces, or otherwise affects existing legal protections, both procedural and substantive, relating to the state board's regulation of diversion and use of water, including, but not limited to, water right priorities, the protection provided to municipal interests by Sections 106 and 106.5, and changes in water rights. Nothing in this division expands or otherwise alters the board's existing authority to regulate the diversion and use of water or the courts' existing concurrent jurisdiction over California water rights.

*(Amended by Stats. 2011, Ch. 296)*

**85032.** This division does not affect any of the following:

(a) The Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code).

(b) The California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(c) The Fish and Game Code.

(d) The Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000)).

(e) Chapter 8 (commencing with Section 12930) of Part 6 of Division 6.

(f) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(g) Section 1702.

(h) The application of the public trust doctrine.

(i) Any water right.

(j) The liability of the state for flood protection in the Delta or its watershed.

**85034.** (a) (1) The council shall administer all contracts, grants, easements, and agreements made or entered into by the California Bay-Delta Authority under Division 26.4 (commencing with Section 79400), as that division read on December 31, 2009.

(2) The exercise of the authority described in paragraph (1) is not subject to review or approval by the Department of General Services.

(3) A contract, lease, license, or any other agreement to which the California Bay-Delta Authority is a party is not void or voidable as a result of the implementation of this subdivision, but shall continue in full force and effect until the end of its term.

(b) The council shall be the successor to and shall assume from the California Bay-Delta Authority all of the administrative rights, abilities, obligations, and duties of that authority.

(c) The council shall have possession and control of all records, papers, equipment, supplies, contracts, leases, agreements, and other property, real or personal, connected with the administration of Division 26.4 (commencing with Section 79400), as that division read on December 31, 2009, or held for the benefit or use of the California Bay-Delta Authority.

(d) The council shall assume from the California Bay-Delta Authority all responsibility to manage, in accordance with Chapter 5 (commencing with Section 85280) of Part 3, the science program element that was required to be undertaken by Division 26.4 (commencing with Section 79400).

(e) Consistent with the responsibilities and duties assumed by the council pursuant to this section, all staff, resources, and funding within the Natural Resources Agency and the Department of Forestry and Fire Protection for the support of the CALFED Bay-Delta Program are hereby transferred to, and may be expended for the purposes of, the council. The executive officer of the council shall confer with the Director of Fish and Game, the director of the department, and the executive director of the board regarding possible reallocation of the staff and resources. The status, position, and rights of any officer or employee shall not be affected by this transfer and all officers and employees shall be retained pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

#### CHAPTER 4. DEFINITIONS

**85050.** Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this division.

**85051.** “Acquisition” means the acquisition of a fee interest or any other interest, including easements, leases, and development rights.

**85052.** “Adaptive management” means a framework and flexible decision making process for ongoing knowledge acquisition, monitoring, and evaluation leading to continuous improvement in management planning and implementation of a project to achieve specified objectives.

**85053.** “Bay Delta Conservation Plan” or “BDCP” means a multispecies conservation plan.

**85054.** “Coequal goals” means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

**85055.** “Commission” means the Delta Protection Commission established in Division 19.5 (commencing with Section 29700) of the Public Resources Code.

**85056.** “Conservancy” means the Sacramento-San Joaquin Delta Conservancy established in Section 32320 of the Public Resources Code.

**85057.** “Council” means the Delta Stewardship Council established in Section 85200.

**85057.5.** (a) “Covered action” means a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

(1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.

(2) Will be carried out, approved, or funded by the state or a local public agency.

(3) Is covered by one or more provisions of the Delta Plan.

(4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

(b) “Covered action” does not include any of the following:

(1) A regulatory action of a state agency.

(2) Routine maintenance and operation of the State Water Project or the federal Central Valley Project.

(3) Regional transportation plans prepared pursuant to Section 65080 of the Government Code.

(4) Any plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization under Section 65080 of the Government Code has determined is consistent with either a sustainable communities strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this paragraph, “consistent with” means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.

(5) Routine maintenance and operation of any facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency.

(6) Any plan, program, project, or activity that occurs, in whole or in part, in the Delta, if both of the following conditions are met:

(A) The plan, program, project, or activity is undertaken by a local public agency that is located, in whole or in part, in the Delta.

(B) Either a notice of determination is filed, pursuant to Section 21152 of the Public Resources Code, for the plan, program, project, or activity by, or the plan, program, project, or activity is fully permitted by, September 30, 2009.

(7) (A) Any project within the secondary zone, as defined pursuant to Section 29731 of Public Resources Code as of January 1, 2009, for which a notice of approval or determination pursuant to Section 21152 of the Public Resources Code has been filed before the date on which the Delta Plan becomes effective.

(B) Any project for which a notice of approval or determination is filed on or after the date on which the final Bay Delta Conservation Plan becomes effective, and before the date on which the Delta Plan becomes effective, is not a covered action but shall be consistent with the Bay Delta Conservation Plan.

(C) Subparagraphs (A) and (B) do not apply to either of the following:

(i) Any project that is within a Restoration Opportunity Area as shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy of the Bay Delta Conservation Plan, August 3, 2009, or as shown in a final Bay Delta Conservation Plan.

(ii) Any project that is within the alignment of a conveyance facility as shown in Figures 1 to 5, inclusive, of the Final Draft Initial Assessment of Dual Delta Water Conveyance Report, April 23, 2008, and in future revisions of this document by the department.

(c) Nothing in the application of this section shall be interpreted to authorize the abrogation of any vested right whether created by statute or by common law.

**85058.** “Delta” means the Sacramento-San Joaquin Delta as defined in Section 12220 and the Suisun Marsh, as defined in Section 29101 of the Public Resources Code.

**85059.** “Delta Plan” means the comprehensive, long-term management plan for the Delta as adopted by the council in accordance with this division.

**85060.** “Delta watershed” means the Sacramento River Hydrologic Region and the San Joaquin River Hydrologic Region as described in the department’s Bulletin No. 160-05.

**85064.** “Public water agency” means a public entity, as defined in Section 514, that provides water service, as defined in Section 515.

**85066.** “Restoration” means the application of ecological principles to restore a degraded or fragmented ecosystem and return it to a condition in which its biological and structural components achieve a close approximation of its natural potential, taking into consideration the physical changes that have occurred in the past and the future impact of climate change and sea level rise.

**85067.** “Strategic Plan” means both the “Delta Vision Strategic Plan” issued by the Delta Vision Blue Ribbon Task Force on October 17, 2008, and the “Delta Vision Implementation Report” adopted by the Delta Vision Committee and dated December 31, 2008.

**PART 2.**  
**EARLY ACTIONS**

**85080.** The council shall appoint a Delta Independent Science Board in accordance with Section 85280.

**85082.** The council shall develop and implement a strategy to appropriately engage participation of the federal agencies with responsibilities in the Delta. This strategy shall include engaging these federal agencies to develop the Delta Plan consistent with the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and Section 8 of the federal Reclamation Act of 1902.

**85084.** The council shall develop an interim plan that includes recommendations for early actions, projects, and programs.

**85084.5.** The Department of Fish and Game, in consultation with the United States Fish and Wildlife Service and the National Marine Fisheries Service and based on the best available science, shall develop and recommend to the board Delta flow criteria and quantifiable biological objectives for aquatic and terrestrial species of concern dependent on the Delta. The recommendations shall be developed no later than 12 months after the date of enactment of this division.

**85085.** The department shall do all of the following:

(a) Coordinate with the Department of Fish and Game, the board, the California regional water quality control boards, and the State Lands Commission efforts to cooperate with the United States Bureau of Reclamation to construct and implement the Two-Gates Fish Protection Demonstration Project by December 1, 2010.

(b) Evaluate the effectiveness of the Three Mile Slough Barrier project.

(c) Expeditiously move ahead with other near term actions as identified in the Strategic Plan.

(d) Assist in implementing early action ecosystem restoration projects, including, but not limited to, Dutch Slough tidal marsh restoration and Meins Island tidal marsh restoration.

**85086.** (a) The board shall establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010.

(b) It is the intent of the Legislature to establish an accelerated process to determine instream flow needs of the Delta for the purposes of facilitating the planning decisions that are required to achieve the objectives of the Delta Plan.

(c) (1) For the purpose of informing planning decisions for the Delta Plan and the Bay Delta Conservation Plan, the board shall, pursuant to its public trust obligations, develop new flow criteria for the Delta ecosystem necessary to protect public trust resources. In carrying out this section, the board shall review existing water quality objectives and use the best available scientific information. The flow criteria for the Delta ecosystem shall include the volume, quality, and timing

of water necessary for the Delta ecosystem under different conditions. The flow criteria shall be developed in a public process by the board within nine months of the enactment of this division. The public process shall be in the form of an informational proceeding conducted pursuant to Article 3 (commencing with Section 649) of Chapter 1.5 of Division 3 of Title 23 of the California Code of Regulations, and shall provide an opportunity for all interested persons to participate. The flow criteria shall not be considered predecisional with regard to any subsequent board consideration of a permit, including any permit in connection with a final BDCP.

(2) Any order approving a change in the point of diversion of the State Water Project or the federal Central Valley Project from the southern Delta to a point on the Sacramento River shall include appropriate Delta flow criteria and shall be informed by the analysis conducted pursuant to this section. The flow criteria shall be subject to modification over time based on a science-based adaptive management program that integrates scientific and monitoring results, including the contribution of habitat and other conservation measures, into ongoing Delta water management.

(3) Nothing in this section amends or otherwise affects the application of the board's authority under Part 2 (commencing with Section 1200) of Division 2 to include terms and conditions in permits that in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated.

(d) The board shall enter into an agreement with the State Water Project contractors and the federal Central Valley Project contractors, who rely on water exported from the Sacramento River watershed, or a joint powers authority comprised of those contractors, for reimbursement of the costs of the analysis conducted pursuant to this section.

(e) The board shall submit its flow criteria determinations pursuant to this section to the council for its information within 30 days of completing the determinations.

**85087.** The board, by December 31, 2010, shall submit to the Legislature a prioritized schedule and estimate of costs to complete instream flow studies for the Delta and for high priority rivers and streams in the Delta watershed, not otherwise covered by Section 85086, by 2012, and for all major rivers and streams outside the Sacramento River watershed by 2018. In developing this schedule, the board shall consult with the Department of Fish and Game as to the timing of its submission of recommendations for instream flow needs.

**85088.** Until the board issues an order approving a change in the point of diversion of the State Water Project and the federal Central Valley Project from the southern Delta to a point on the Sacramento River as specified in subdivision (c) of Section 85086, the department shall not commence construction of any diversion, conveyance, or other facility necessary to divert and convey water pursuant to the change in point of diversion.

**85089.** Construction of a new Delta conveyance facility shall not be initiated until the persons or entities that contract to receive water from the State Water Project and the federal Central Valley Project or a joint powers authority representing

those entities have made arrangements or entered into contracts to pay for both of the following:

(a) The costs of the environmental review, planning, design, construction, and mitigation, including mitigation required pursuant to Division 13 (commencing with Section 21000 of the Public Resources Code), required for the construction, operation, and maintenance of any new Delta water conveyance facility.

(b) Full mitigation of property tax or assessments levied by local governments or special districts for land used in the construction, location, mitigation, or operation of new Delta conveyance facilities.

## PART 3 . DELTA GOVERNANCE

### CHAPTER 3. CONSISTENCY OF STATE AND LOCAL PUBLIC AGENCY ACTION

**85225.** A state or local public agency that proposes to undertake a covered action, prior to initiating the implementation of that covered action, shall prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and shall submit that certification to the council.

**85225.5.** To assist state and local public agencies in preparing the required certification, the council shall develop procedures for early consultation with the council on the proposed covered action.

**85225.10.** (a) Any person who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal with regard to a certification of consistency submitted to the council.

(b) The appeal shall clearly and specifically set forth the basis for the claim, including specific factual allegations, that the covered action is inconsistent with the Delta Plan. The council may request from the appellant additional information necessary to clarify, amplify, correct, or otherwise supplement the information submitted with the appeal, within a reasonable period.

(c) The council, or by delegation the executive officer, may dismiss the appeal for failure of the appellant to provide information requested by the council within the period provided, if the information requested is in the possession or under the control of the appellant.

**85225.15.** The appeal shall be filed no later than 30 days after the submission of the certification of consistency. If no person appeals the certification of consistency, the state or local public agency may proceed to implement the covered action.

**85225.20.** The appeal shall be heard by the council within 60 days of the date of the filing of the appeal, unless the council, or by delegation the executive officer,

determines that the issue raised on appeal is not within the council's jurisdiction or does not raise an appealable issue. The council shall make its decision on the appeal within 60 days of hearing the appeal.

**85225.25.** After a hearing on an appealed action, the council shall make specific written findings either denying the appeal or remanding the matter to the state or local public agency for reconsideration of the covered action based on the finding that the certification of consistency is not supported by substantial evidence in the record before the state or local public agency that filed the certification. Upon remand, the state or local agency may determine whether to proceed with the covered action. If the agency decides to proceed with the action or with the action as modified to respond to the findings of the council, the agency shall, prior to proceeding with the action, file a revised certification of consistency that addresses each of the findings made by the council and file that revised certification with the council.

**85225.30.** The council shall adopt administrative procedures governing appeals, which shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

#### **CHAPTER 4. DELTA WATERMASTER**

**85230.** (a) The board, in consultation with the council, shall appoint, for a term of four years, a special master for the Delta, whose title shall be "the Delta Watermaster."

(b) The board shall adopt internal procedures delegating authority to the Delta Watermaster. The Delta Watermaster shall exercise the board's authority to provide timely monitoring and enforcement of board orders and license and permit terms and conditions. The Delta Watermaster's delegated authority shall include authority to require monitoring and reporting, authority for approvals delegated to an officer or employee of the board by the terms of a water right permit or license, authority to approve temporary urgency changes pursuant to Chapter 6.6 (commencing with Section 1435) of Part 2 of Division 2, and authority to issue a notice of proposed cease and desist order or administrative civil liability complaint. The Delta Watermaster's authority shall be limited to diversions in the Delta, and for the monitoring and enforcement of the board's orders and license and permit terms and conditions that apply to conditions in the Delta.

(c) The internal procedures adopted by the board shall provide for due process in adjudicative proceedings, and may establish procedures for the issuance of a stay of any order or decision of the Delta Watermaster for which a petition for reconsideration is filed or reconsideration is ordered under Section 1122. The board may provide any additional duties or needs of the Delta Watermaster that the board deems necessary for effective day-to-day enforcement of its decisions.

(d) The Delta Watermaster shall submit regular reports to the board and the council including, but not limited to, reports on water rights administration, water quality issues, and conveyance operations.

## PUBLIC RESOURCES CODE

### DIVISION 10. STREAMFLOW PROTECTION STANDARDS

**10000.** The Legislature finds and declares as follows:

(a) A substantial increase has occurred in the number of requests to appropriate water from the various streams and watercourses of this state, especially for the purpose of generating electric energy.

(b) These requests, if approved without due regard for their cumulative effect on streamflows, could adversely affect, to a serious and significant degree, the fish and wildlife resources dependent on those streams and watercourses.

(c) These fish and wildlife resources are important for the entire state and are inextricably linked to the continued economic viability of industries, such as the fishing industry, which are desirable and important components of the state's economy.

*(Added by Stats. 1982, Ch. 1478.)*

**10001.** The Director of Fish and Game shall identify and list those streams and watercourses throughout the state for which minimum flow levels need to be established in order to assure the continued viability of stream-related fish and wildlife resources. The director shall include in this identification list those streams and watercourses the director determines are significant, along with a statement of findings as to why that stream or watercourse was selected. The identification list required by this section shall rank the streams and watercourses beginning with those where the need for establishing minimum flow levels is the greatest. The director, at his discretion, may revise the list and may add or delete streams or watercourses as circumstances require. The initial identification list required by this section shall be completed no later than January 1, 1984.

*(Added by Stats. 1982, Ch. 1478.)*

**10002.** The Director of Fish and Game shall prepare proposed streamflow requirements, which shall be specified in terms of cubic feet of water per second, for each stream or watercourse identified pursuant to Section 10001. In developing the requirements for each stream, the director shall consult with the Director of Water Resources, the Director of Boating and Waterways, the Director of Parks and Recreation and with all affected local governments. The Director of Fish and Game may also consult with any private individuals, groups, or organizations as the director deems advisable. Upon completion of the proposed streamflow requirements for any individual stream or watercourse, the Director of Fish and Game shall transmit these proposed requirements to the State Water Resources Control Board. The State Water Resources Control Board shall consider these requirements within a stream as set forth in Section 1257.5 of the Water Code. The Director of Fish and Game shall complete the preparation of proposed requirements for the initial streams not later than July 1, 1989.

The Department of Fish and Game may contract for temporary services for purposes of preparing the proposed streamflow requirements.

**10003.** The Director of Fish and Game, on his or her own motion or at the request

of the State Water Resources Control Board, may review any streamflow requirement and may propose revision or modification thereof. The proposed revision or modification shall be transmitted to the State Water Resources Control Board.

*(Amended by Stats. 1985, Ch. 1259.)*

**10004.** The Department of Fish and Game shall initiate studies to develop proposed streamflow requirements for those streams or watercourses in each fiscal year for which funds are appropriated and shall complete studies on each stream or watercourse within three years. It is the intent of the Legislature that the department develop a program that will initiate studies on at least 10 streams or watercourses in each fiscal year.

*(Added by Stats. 1985, Ch. 1259.)*

**10005.** (a) The Department of Fish and Game shall impose and collect a filing fee of eight hundred fifty dollars (\$850) to defray the costs of identifying streams and providing studies pursuant to Division 10 (commencing with Section 10000) of the Public Resources Code.

(b) The filing fee shall be proportional to the cost incurred by the Department of Fish and Game and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the costs of the Department of Fish and Game as specified in subdivision (a).

(c) Any user of water, including a person or entity holding riparian or appropriative rights, shall pay the filing fee to the Department of Fish and Game upon application to the State Water Resources Control Board for any permit, transfer, extension, or change of point of diversion, place of use, or purpose of use, if there is a diversion of water from any waterway where fish reside. No permit, or other entitlement identified in this section is effective until the filing fee is paid. The State Water Resources Control Board shall, every six months, forward all fees collected to the department and provide the location for each entitlement for which a filing fee has been collected.

(d) The fee imposed by this section shall not be imposed on the following applications filed with the State Water Resources Control Board:

(1) Small domestic use registrations and livestock stockpond certificates submitted pursuant to Article 2.7 (commencing with Section 1228) of Chapter 2 of Division 2 of the Water Code.

(2) The first application for an extension of time for an individual permit if no change in point of diversion, place of use, or purpose of use is included in the application.

(3) Water applications which, in the opinion of the Department of Fish and Game, are filed for administrative and technical clarification purposes only.

(4) Water applications or petitions, the primary purpose of which is to benefit fish and wildlife resources. The determination of the benefit to fish and wildlife shall be made, in writing, by the Department of Fish and Game in order to be exempt from the fee.

(e) If an applicant or petitioner files multiple applications or petitions for the same appropriation, transfer, extension, or change, and the State Water Resources Control Board reviews and considers the applications or petitions together, only one filing fee is required for those applications or petitions.

*(Added by Stats. 1990, Ch. 1706; Amended by Stats. 1992, Ch. 761; Amended by Stats. 2001, Ch. 398.)*

## DEPARTMENT OF FISH AND GAME

### DIVISION 2. DEPARTMENT OF FISH AND GAME

#### CHAPTER 1 ORGANIZATION AND GENERAL FUNCTIONS

##### Article 1. Generally

**711.** (a) It is the intent of the Legislature to ensure adequate funding from appropriate sources for the department. To this end, the Legislature finds and declares that:

(1) The costs of nongame fish and wildlife programs shall be provided annually in the Budget Act by appropriating money from the General Fund, through nongame user fees, and sources other than the Fish and Game Preservation Fund to the department for these purposes.

(2) The costs of commercial fishing programs shall be provided out of revenues from commercial fishing taxes, license fees, and other revenues, from reimbursements and federal funds received for commercial fishing programs, and other funds appropriated by the Legislature for this purpose.

(3) The costs of hunting and sportfishing programs shall be provided out of hunting and sportfishing revenues and reimbursements and federal funds received for hunting and sportfishing programs, and other funds appropriated by the Legislature for this purpose. These revenues, reimbursements, and federal funds shall not be used to support commercial fishing programs, free hunting and fishing license programs, or nongame fish and wildlife programs.

(4) The costs of managing lands managed by the department and the costs of wildlife management programs shall be supplemented out of revenues in the Native Species Conservation and Enhancement Account in the Fish and Game Preservation Fund.

(5) Hunting, sportfishing, and sport ocean fishing license fees shall be adjusted annually to an amount equal to that computed pursuant to Section 713. However, a substantial increase in the aggregate of hunting and sportfishing programs shall be reflected by appropriate amendments to the sections of this code that establish the base sport license fee levels. The inflationary index provided in Section 713 may not be used to accommodate a substantial increase in the aggregate of hunting and sportfishing programs.

(b) The director and the Secretary of the Resources Agency shall, with the department's annual budget submittal to the Legislature, submit a report on the fund condition, including the expenditures and revenue, for all accounts and subaccounts within the Fish and Game Preservation Fund. The department shall also update its cost allocation plan to reflect the costs of program activities.

(c) For purposes of this article, "substantial increase" means an increase in excess of 5 percent of the Fish and Game Preservation Fund portion of the

department's current year support budget, excluding cost-of-living increases provided for salaries, staff benefits, and operating expenses.

*(Added by Stats. 1978, Ch. 855; Amended by Stats. 1985, Ch. 1463; Amended by Stats. 1986, Ch. 1368; Amended by Stats. 1988, Ch. 1539; Amended by Stats. 1993, Ch. 1027; Amended by Stats. 2006, Ch. 667.)*

**711.2.** (a) For purposes of this code, unless the context otherwise requires, "wildlife" means and includes all wild animals, birds, plants, fish, amphibians, reptiles, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability and "project" has the same meaning as defined in Section 21065 of the Public Resources Code.

(b) For purposes of this article, "person" includes any individual, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, city, county, city and county, town, the state, and any of the agencies of those entities.

*(Added by Stats. 1990, Ch. 1706; Amended by Stats. 1994, Ch. 1010; Amended by Stats. 2006, Ch. 667; Amended by Stats. 2007, Ch. 285.)*

**711.4.** (a) The department shall impose and collect a filing fee in the amount prescribed in subdivision (d) to defray the costs of managing and protecting fish and wildlife trust resources, including, but not limited to, consulting with other public agencies, reviewing environmental documents, recommending mitigation measures, developing monitoring requirements for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), consulting pursuant to Section 21104.2 of the Public Resources Code, and other activities protecting those trust resources identified in the review pursuant to the California Environmental Quality Act.

(b) The filing fees shall be proportional to the cost incurred by the department and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified. The department shall annually adjust the fees pursuant to Section 713.

(c) (1) All project applicants and public agencies subject to the California Environmental Quality Act shall pay a filing fee for each proposed project, as specified in subdivision (d).

(2) Notwithstanding paragraph (1), a filing fee shall not be paid pursuant to this section if any of the following conditions exist:

(A) The project has no effect on fish and wildlife.

(B) The project is being undertaken by the department.

(C) The project costs are payable by the department from any of the following sources that are held by the department:

(i) The Public Resources Account in the Cigarette and Tobacco Products Surtax Fund.

(ii) The California Wildlife, Coastal, and Park Land Conservation Fund of 1988.

(iii) The Habitat Conservation Fund.

(iv) The Fisheries Restoration Account in the Fish and Game Preservation Fund.

(v) The Commercial Salmon Stamp Account in the Fish and Game Preservation Fund.

- (vi) Striped bass stamp funds collected pursuant to Section 7360.
  - (vii) The California Ocean Resource Enhancement Account.
- (D) The project is implemented by the department through a contract with either a nonprofit entity or a local government agency.
- (3) Filing fees shall be paid at the time and in the amount specified in subdivision (d). Notwithstanding Sections 21080.5 and 21081 of the Public Resources Code, a project shall not be operative, vested, or final, and local government permits for the project shall not be valid, until the filing fees required pursuant to this section are paid.
- (d) The fees shall be in the following amounts:
- (1) For a project that is statutorily or categorically exempt from the California Environmental Quality Act, including those certified regulatory programs that incorporate statutory and categorical exemptions, a filing fee shall not be paid.
- (2) For a project for which a negative declaration is prepared pursuant to subdivision (c) of Section 21080 of the Public Resources Code, the filing fee is one thousand eight hundred dollars (\$1,800). A local agency collecting the filing fee shall remit the fee to the county clerk at the time of filing a notice of determination pursuant to Section 21152 of the Public Resources Code. A state agency collecting the filing fee shall remit the fee to the Office of Planning and Research at the time of filing a notice of determination pursuant to Section 21108 of the Public Resources Code.
- (3) For a project with an environmental impact report prepared pursuant to the California Environmental Quality Act, the filing fee is two thousand five hundred dollars (\$2,500). A local agency collecting the filing fee shall remit the fee to the county clerk at the time of filing a notice of determination pursuant to Section 21152 of the Public Resources Code. A state agency collecting the filing fee shall remit the fee to the Office of Planning and Research at the time of filing a notice of determination pursuant to Section 21108 of the Public Resources Code.
- (4) For a project that is subject to a certified regulatory program pursuant to Section 21080.5 of the Public Resources Code, the filing fee is eight hundred fifty dollars (\$850). The filing fee shall be paid to the department before the filing of the notice of determination pursuant to Section 21080.5 of the Public Resources Code.
- (e) The county clerk may charge a documentary handling fee of fifty dollars (\$50) per filing in addition to the filing fee specified in subdivision (d).
- (1) The county clerk of each county and the Office of Planning and Research shall maintain a record, both electronic and in paper, of all environmental documents received. The record shall include, for each environmental document received, the name of each applicant or lead agency, the document filing number, the project name as approved by the lead agency, and the filing date. The record shall be made available for examination or audit by authorized personnel of the department during normal business hours.
- (2) The filing fee imposed and collected pursuant to subdivision (d) shall be remitted monthly to the department within 30 days after the end of each month. The remittance shall be accompanied with the information required pursuant to paragraph (1). The amount of fees due shall be reported on forms prescribed and

provided by the department.

(3) The department shall assess a penalty of 10 percent of the amount of fees due for a failure to remit the amount payable when due. The department may pursue collection of delinquent fees through the Controller's office pursuant to Section 12419.5 of the Government Code.

(f) Notwithstanding Section 12000, failure to pay the fee under subdivision (d) is not a misdemeanor. All unpaid fees are a statutory assessment subject to collection under procedures as provided in the Revenue and Taxation Code.

(g) Only one filing fee shall be paid for each project unless the project is tiered or phased, or separate environmental documents are required.

(h) This section does not preclude or modify the duty of the department to recommend, require, permit, or engage in mitigation activities pursuant to the California Environmental Quality Act.

(i) The permit process of the California Coastal Commission, as certified by the Secretary of the Resources Agency, is exempt from the payment of the filing fees prescribed by paragraph (4) of subdivision (d) insofar as the permits are issued under any of the following regulations:

(1) Subchapter 4 (commencing with Section 13136) of Chapter 5 of Division 5.5 of Title 14 of the California Code of Regulations.

(2) Subchapter 1 (commencing with Section 13200), Subchapter 3 (commencing with Section 13213), Subchapter 3.5 (commencing with Section 13214), Subchapter 4 (commencing with Section 13215), Subchapter 4.5 (commencing with Section 13238), Subchapter 5 (commencing with Section 13240), Subchapter 6 (commencing with Section 13250), and Subchapter 8 (commencing with Section 13255.0) of Chapter 6 of Division 5.5 of Title 14 of the California Code of Regulations.

(Added by Stats. 1990, Ch. 1706; Amended by Stats. 1994, Ch. 433; Amended by Stats. 2006, Ch. 667; Amended by Stats. 2007, Ch. 253.)

**711.7.** (a) The fish and wildlife resources are held in trust for the people of the state by and through the department.

(1) Insofar as state wildlife trust resources exist and depend upon federal proprietary lands or federal land and water adjacent to or affecting state trust resources, all persons engaging in projects or activities under federal license, contract, or permit, to the extent permitted by federal law, shall be governed by this article and shall pay project filing fees unless the payment of state filing and permit fees is explicitly preempted by the authority of the federal agency permitting the use or modification of state trust resources.

(2) Insofar as state wildlife trust resources exist and depend upon federal proprietary lands or federal lands and waters adjacent to or affecting state trust resources, all federal agencies acting in their proprietary capacity, to the extent permitted by federal law, shall be governed by this article and Section 10005 and 21089 of the Public Resources Code, unless the payment of state filing and permit fees is explicitly preempted by the authority of a particular federal agency.

(b) If a court of competent jurisdiction finds that any provision of this section or the application thereof to any federal agency, person, or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

*(Added by Stats. 1990, Ch. 1706.)*

**713.** (a) The changes in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the United States Department of Commerce, shall be used as the index to determine an annual rate of increase or decrease in the fees for licenses, stamps, permits, tags, or other entitlements issued by the department.

(b) The department shall determine the change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the United States Department of Commerce, for the quarter ending March 31 of the current year compared to the quarter ending March 31 of the previous year. The relative amount of the change shall be multiplied by the current fee for each license, stamp, permit, tag, or other entitlement issued by the department.

The product shall be rounded to the nearest twenty-five cents (\$0.25), and the resulting amount shall be added to the fee for the current year. The resulting amount shall be the fee for the license year beginning on or after January 1 of the next succeeding calendar year for the license, stamp, permit, tag, or other entitlement that is adjusted under this section.

(c) Notwithstanding any other provision of law, the department may recalculate the current fees charged for each license, stamp, permit, tag, or other entitlement issued by the department, to determine that all appropriate indexing has been included in the current fees. This section shall apply to all licenses, stamps, permits, tags, or other entitlements, that have not been increased each year since the base year of the 1985-86 fiscal year.

(d) The calculations provided for in this section shall be reported to the Legislature with the Governor's Budget Bill.

(e) The Legislature finds that all revenues generated by fees for licenses, stamps, permits, tags, and other entitlements, computed under this section and used for the purposes for which they were imposed, are not subject to Article XIII B of the California Constitution.

(f) The department shall, at least every five years, analyze all fees for licenses, stamps, permits, tags, and other entitlements issued by it to ensure the appropriate fee amount is charged. Where appropriate, the department shall recommend to the Legislature or the commission that fees established by the commission or the Legislature be adjusted to ensure that those fees are appropriate.

*(Added by Stats. 1978, Ch. 855; Amended by Stats. 1983, Ch. 1117; Amended by Stats. 1984, Ch. 1411; Amended by Stats. 1985, Ch. 1463; Amended by Stats. 1986, Ch. 1368; Amended by Stats. 1990, Ch. 1706; Amended by Stats. 1991, Ch. 732; Amended by Stats. 2003, Ch. 240.)*

**CHAPTER 6.**  
**FISH AND WILDLIFE PROTECTION AND CONSERVATION**

(Added by Stats. 2003, Ch. 736.)\*

**1600.** The Legislature finds and declares that the protection and conservation of the fish and wildlife resources of this state are of utmost public interest. Fish and wildlife are the property of the people and provide a major contribution to the economy of the state, as well as providing a significant part of the people's food supply; therefore their conservation is a proper responsibility of the state. This chapter is enacted to provide conservation for these resources.

**1601.** The following definitions apply to this chapter:

- (a) "Agreement" means a lake or streambed alteration agreement.
- (b) "Day" means calendar day.
- (c) "Emergency" has the same definition as in Section 21060.3 of the Public Resources Code.
- (d) "Entity" means any person, state or local governmental agency, or public utility that is subject to this chapter.

**1602.** (a) An entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless all of the following occur:

(1) The department receives written notification regarding the activity in the manner prescribed by the department. The notification shall include, but is not limited to, all of the following:

- (A) A detailed description of the project's location and a map.
- (B) The name, if any, of the river, stream, or lake affected.
- (C) A detailed project description, including, but not limited to, construction plans and drawings, if applicable.
- (D) A copy of any document prepared pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.
- (E) A copy of any other applicable local, state, or federal permit or agreement already issued.
- (F) Any other information required by the department.

(2) The department determines the notification is complete in accordance with Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, <sup>\*Repeals former Chapter 6, added by Stats. 1976, Ch. 603</sup> irrespective of whether the activity constitutes a development project for the purposes of that chapter.

- (3) The entity pays the applicable fees, pursuant to Section 1609.
- (4) One of the following occurs:
  - (A) (i) The department informs the entity, in writing, that the activity will not substantially adversely affect an existing fish or wildlife resource, and that the entity may commence the activity without an agreement, if the entity conducts the activity as described in the notification, including any measures in the notification that are intended to protect fish and wildlife resources.

(ii) Each region of the department shall log the notifications of activities where no agreement is required. The log shall list the date the notification was received by the department, a brief description of the proposed activity, and the location of the activity. Each item shall remain on the log for one year. Upon written request by any person, a regional office shall send the log to that person monthly for one year. A request made pursuant to this clause may be renewed annually.

(B) The department determines that the activity may substantially adversely affect an existing fish or wildlife resource and issues a final agreement to the entity that includes reasonable measures necessary to protect the resource, and the entity conducts the activity in accordance with the agreement.

(C) A panel of arbitrators issues a final agreement to the entity in accordance with subdivision (b) of Section 1603, and the entity conducts the activity in accordance with the agreement.

(D) The department does not issue a draft agreement to the entity within 60 days from the date notification is complete, and the entity conducts the activity as described in the notification, including any measures in the notification that are intended to protect fish and wildlife resources.

(b) (1) If an activity involves the routine maintenance and operation of water supply, drainage, flood control, or waste treatment and disposal facilities, notice to and agreement with the department shall not be required after the initial notification and agreement, unless the department determines either of the following:

(A) The work described in the agreement has substantially changed.

(B) Conditions affecting fish and wildlife resources have substantially changed, and those resources are adversely affected by the activity conducted under the agreement.

(2) This subdivision applies only if notice to, and agreement with, the department was attained prior to January 1, 1977, and the department has been provided a copy of the agreement or other proof of the existence of the agreement that satisfies the department, if requested.

(c) It is unlawful for any person to violate this chapter.

**1603.** (a) After the notification is complete, the department shall determine whether the activity may substantially adversely affect an existing fish and wildlife resource. If the department determines that the activity may have that effect, the department shall provide a draft agreement to the entity within 60 days after the notification is complete. The draft agreement shall describe the fish and wildlife resources that the department has determined the activity may substantially adversely affect and include measures to protect those resources. The department's description of the affected resources shall be specific and detailed, and the department shall make available, upon request, the information upon which its determination of substantial adverse effect is based. Within 30 days of the date of receipt of the draft agreement, the entity shall notify the department whether the measures to protect fish and wildlife resources in that draft agreement are acceptable. If the department's measures are not acceptable, the entity shall so notify the department in writing and specify the measures that are not acceptable. Upon written request,

the department shall meet with the entity within 14 days of the date the department receives the request for the purpose of resolving any disagreement regarding those measures. If the entity fails to respond, in writing, within 90 days of receiving the draft agreement, the department may withdraw that agreement, and require the entity to resubmit a notification to the department before commencing the activity.

(b) If mutual agreement is not reached at any meeting held pursuant to subdivision (a), the entity may request, in writing, the appointment of a panel of arbitrators to resolve the disagreement. A panel of arbitrators shall be appointed within 14 days of receipt of the written request. The panel of arbitrators shall be comprised of three persons, as follows: one representative selected by the department; one representative selected by the affected entity; and a third person mutually agreed upon by the department and the entity, who shall serve as the panel chair. If the department and the entity cannot agree on the third person within that 14-day period, the third person shall be appointed in the manner provided by Section 1281.6 of the Code of Civil Procedure. The third person shall have scientific expertise relevant to the fish and wildlife resources that may be substantially adversely affected by the activity proposed by the entity and to the measures proposed by the department to protect those resources. The authority of the panel of arbitrators is limited to resolving disagreements regarding the measures specified in subdivision (a), and subdivisions (b) and (g) of Section 1605, and, in the case of an extension, whether or not the agreement needs to be modified to protect fish and wildlife resources. Any decision by the panel of arbitrators shall be issued within 14 days from the date the panel was established, shall be binding on the department and the affected entity, shall be based on the best scientific information reasonably available at the time of the arbitration, and, except for a decision to extend an agreement without modification, shall be made in the form of a final agreement. The final agreement issued by the panel shall also include, without modification, all measures that were not subject to arbitration. Each party shall pay the expenses of their selected representative and pay one-half the expenses of the third person.

**1604.** Any party affected by a decision made by an arbitration panel pursuant to this chapter may petition a court of competent jurisdiction for confirmation, correction, or vacation of the decision in accordance with Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

**1605.** (a) (1) Except as otherwise provided in this section, the term of an agreement shall not exceed five years.

(2) Notwithstanding paragraph (1), after the agreement expires, the entity shall remain responsible for implementing any mitigation or other measures specified in the agreement to protect fish and wildlife resources.

(b) Any entity may request one extension of a previously-approved agreement, if the entity requests the extension prior to the expiration of its original term. The department shall grant the extension unless it determines that the agreement requires modification because the measures contained in the agreement no longer protect the fish and wildlife resources that the activity may substantially adversely affect. In the event the department makes that determination, the department shall propose measures intended to protect those resources.

(c) If the entity disagrees with the department's determination that the agreement requires modification to protect fish and wildlife resources or with the measures proposed by the department, the disagreement shall be resolved pursuant to the procedures described in subdivision (b) of Section 1603.

(d) The department may not extend an agreement for more than five years.

(e) (1) An original agreement shall remain in effect until the department grants the extension request, or new measures are imposed to protect fish and wildlife resources by agreement or through the arbitration process.

(2) Notwithstanding paragraph (1), an original agreement may not remain in effect for more than one year after its expiration date.

(f) If the entity fails to submit a request to extend an agreement prior to its expiration, the entity shall submit a new notification before commencing or continuing the activity covered by the agreement.

(g) Notwithstanding paragraph (1) of subdivision (a), the department may issue an agreement, that otherwise meets the requirements of this chapter, for a term longer than five years if the following conditions are satisfied:

(1) The information the entity provides to the department in its notification meets the requirements of paragraph (1) of subdivision (a) of Section 1602.

(2) The entity agrees to provide a status report to the department every four years. The status report shall be delivered to the department no later than 90 days prior to the end of each four-year period, and shall include all of the following information:

(A) A copy of the original agreement.

(B) The status of the activity covered by the agreement.

(C) An evaluation of the success or failure of the measures in the agreement to protect the fish and wildlife resources that the activity may substantially adversely affect.

(D) A discussion of any factors that could increase the predicted adverse impacts on fish and wildlife resources, and a description of the resources that may be adversely affected.

(3) The department shall review the four-year status report, and conduct an onsite inspection to confirm that the entity is in compliance with the agreement and that the measures in the agreement continue to protect the fish and wildlife resources. If the department determines that the measures in the agreement no longer protect the fish and wildlife resources that are being substantially adversely affected by the activity, the department, in consultation with the entity, and within 45 days of receipt of the report, shall impose one or more new measures to protect the fish and wildlife resources affected by the activity. If requested to do so by the entity, the department shall make available the information upon which it determined the agreement no longer protects the affected fish and wildlife resources. If the entity disagrees with one or more of the new measures, within seven days of receiving the new measures, it shall notify the department, in writing, of the disagreement. The entity and the department shall consult regarding the disagreement. The consultation shall be completed within seven days after the department receives the entity's notice of disagreement. If the department and entity fail to reach agreement, the entity may request, in writing, the appointment of a panel of

arbitrators to resolve the disagreement. The panel of arbitrators shall be appointed within 14 days of the completed consultation. The panel of arbitrators shall issue a decision within 14 days of the date it is established. All other provisions of subdivision (b) of Section 1603 regarding the panel shall apply to any arbitration panel established in accordance with this subdivision. If the entity fails to provide timely status reports as required by this subdivision, the department may suspend or revoke the agreement.

(4) The agreement shall authorize department employees to conduct onsite inspections relevant to the agreement, upon reasonable notice. Nothing in this section limits the authority of department employees to inspect private or public sites.

(5) Except as provided in paragraph (3), subparagraph (D) of paragraph (4) of subdivision (a) of Section 1602 and the time periods to process agreements specified in this chapter do not apply to agreements issued pursuant to this section.

(h) Each region of the department shall log the notifications of activities for which a long-term agreement is being considered pursuant to subdivision (g). The log shall list the date the notification was received by the department, a brief description of the proposed activity, and the location of the activity. Each item shall remain on the log for one year. Upon written request by any person, a regional office shall send the log to that person monthly for one year. A request made pursuant to this paragraph may be renewed annually.

## **DIVISION 6. FISH**

### **CHAPTER 3. DAMS, CONDUITS, AND STREAMS**

#### **Article 2. Dams and Obstructions**

**5937.** The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. During the minimum flow of water in any river or stream, permission may be granted by the department to the owner of any dam to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below the dam, when, in the judgment of the department, it is impracticable or detrimental to the owner to pass the water through the fishway.

*(Added by Stats. 1957, Ch. 456.)*

**5943.** (a) The owner of a dam shall accord to the public for the purpose of fishing, the right of access to the waters impounded by the dam during the open season for the taking of fish in the stream or river, subject to the regulations of the commission.

(b) Subdivision (a) does not apply to any impoundment of water by a dam that is wholly located on privately owned land that is primarily agricultural or

residential in nature if the impounded waters are from a stream or river that is not naturally frequented by fish and if the dam does not prevent the free passage of fish over or around the dam. The Legislature finds and declares that this subdivision is intended to be declaratory of existing law.

*(Amended by Stats. 1996, Ch. 273.)*

**5946.** The provisions of Section 5938 shall not be applicable to dams constructed in District 4-1/2 after September 9, 1953.

No permit or license to appropriate water in District 4-1/2 shall be issued by the State Water Rights Board after September 9, 1953, unless conditioned upon full compliance with Section 5937. Plans and specifications for any such dam shall not be approved by the Department of Water Resources unless adequate provision is made for full compliance with Section 5937.

*(Added by Stats. 1957, Ch. 456; Amended by Stats. 1957, Ch. 1932.)*

**5947.** It unlawful for the owner of a dam in District 4-1/2 to release water from the dam, or any facilities for the generation of hydroelectric energy operated in connection therewith, in varying flows in such a manner as to destroy fish life below such release.

*(Added by Stats. 1957, Ch. 456.)*

**5948.** No person shall cause or having caused, permit to exist any log jam or debris accumulation or any other artificial barrier, except a dam for the storage or diversion of water, public bridges and approaches thereto, groins, jetties, seawalls, breakwaters, bulkheads, wharves and piers permitted by law, and debris from mining operations, in any stream in this State, which will prevent the passing of fish up and down stream or which is deleterious to fish as determined by the commission, subject to review by the courts.

*(Added by Stats. 1957, Ch. 456; Amended by Stats. 1957, Ch. 2039.)*

## CHAPTER 8. SALMON, STEELHEAD TROUT, AND ANADROMOUS FISHERIES PROGRAM ACT

### Article 4. Effect of Reduced Water Flows

**6930.** (a) Subject to the availability of funds for the purposes of this section, the department shall contract with the University of California to conduct a study of the effects that reduced waterflows at the mouths and upstream estuaries of rivers selected under subdivision (b) would have on existing salmon and steelhead populations and on existing or prospective salmon and steelhead population restoration or reintroduction programs.

(b) The department shall select the rivers to be included in the study and shall limit its selection to rivers that are within the combined river systems described in paragraph (7) of subdivision (a) of Section 1215.5 of the Water Code, and that are the subject of an application that has been filed with the State Water

Resources Control Board to appropriate water in an amount equal to more than three cubic feet per second or more than 500 acre feet per annum of storage, involving the delivery of water by means other than a pipeline, natural watercourse, well, or aqueduct to any place of use that is outside of the protected area described in paragraph (7) of subdivision (a) of Section 1215.5 of the Water Code.

(c) The findings of the study conducted under this section shall be a factor in any decision of the State Water Resources Control Board to approve or deny an application to appropriate water from any river selected under this section. If the application involves the delivery of water, by means other than a pipeline, natural watercourse, well, or aqueduct, to any place of use that is outside of the protected area described in paragraph (7) of subdivision (a) of Section 1215.5 of the Water Code, the board may not approve that application until after the study has been completed.

(d) Any study conducted pursuant to this section shall conclude within five years of the start of that study.

(e) This section applies to the University of California only if the Regents of the University of California, by resolution, make it applicable to the university.

*(Added by Stats. 2002 Ch. 985; Amended by Stats. 2003, Ch. 681.)*

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## GOVERNMENT CODE

### TITLE 1. GENERAL

### DIVISION 7. MISCELLANEOUS

### CHAPTER 5. JOINT EXERCISE OF POWERS

#### Article 1. Joint Powers Agreements

**6533.** (a) The board of directors of the Eastern Water Alliance Joint Powers Agency may grant available funds to a member public agency for the purposes of assisting that member public agency in acquiring water if the board determines that that water supply will benefit the Eastern San Joaquin County Groundwater Basin as a whole and that that member public agency would otherwise be unable to acquire that water. Section 10753.1 of the Water Code applies to any groundwater regulation under this section. As used in this section, the term “groundwater” has the same definition as set forth in subdivision (a) of Section 10752 of the Water Code.

(b) (1) For the purpose of supplementing the general operating revenues of the joint powers agency, upon the request of the board of directors of the joint powers agency, the Board of Supervisors of San Joaquin County may grant to the joint powers agency funds from the county general fund or Zone 2 of the San Joaquin County Flood Control and Water Conservation District that are available to carry out any purpose of the joint powers agency for which the county or district is authorized to expend funds.

(2) Nothing in paragraph (1) grants a preference to the joint powers agency over other public agencies for the purposes of receiving funds described in that paragraph.

(c) The joint powers agency shall deposit any county or district funds received pursuant to subdivision (b) in a separate account, and upon request of the county or district, shall demonstrate that all expenditures made from that account are being used only to carry out the powers, projects, and purposes of the joint powers agency and San Joaquin County or Zone 2 of the San Joaquin County Flood Control and Water Conservation District.

(d) Subject to Article XIII D of the California Constitution, the joint powers agency may impose a plan implementation charge, in accordance with this subdivision, on landowners within its boundaries for the property related service received from improved groundwater management and planning, and for improved groundwater levels and availability, provided by the joint powers agency. This plan implementation charge shall be a charge for water subject to the procedures

and requirements set forth in subdivisions (a) and (b) of Section 6 of Article XIII D of the California Constitution, as follows:

(1) Each year the board of directors of the joint powers agency may fix a plan implementation charge that may not exceed the annual cost of carrying out the actions financed by the charge. The board of directors may use multiyear budgeting to determine the plan implementation charge for up to five years and adopt a schedule of charges for this time period.

(2) Before imposing the plan implementation charge, the board of directors of the joint powers agency shall identify the parcels of land within the joint powers agency to be benefited by the actions financed by the charge, the need for the plan implementation charge, and the amount of the charge to be imposed on each parcel. The amount of the charge upon any parcel may not exceed the proportional costs of the actions financed by the charge attributable to that parcel. The joint powers agency shall provide written notice of the plan implementation charge and conduct a public hearing as provided in subdivision (a) of Section 6 of Article XIII D of the California Constitution. The joint powers agency may not impose the plan implementation charge if written protests against the charge are presented by a majority of the owners of the identified parcels upon which the charge will be imposed.

(3) (A) The plan implementation charge, at the option of the joint powers agency, may be collected on the tax rolls of the county in the same manner, by the same persons, and at the same time as, together with and not separate from, county ad valorem property taxes. In that event, of the amount collected pursuant to this paragraph, the county auditor may deduct that amount required to reimburse the county for its actual cost of collection.

(B) In lieu of that option, the joint powers agency shall collect plan implementation charges at the same time, together with penalties and interest at the same rates as is prescribed for the collection of county ad valorem property taxes.

(4) The amount of an unpaid plan implementation charge, together with any penalty and interest thereon, shall constitute a lien on that land as of the same time and in the same manner as does the tax lien securing county ad valorem property taxes.

(5) In lieu of a plan implementation charge being imposed on parcels within the boundaries of any individual member public agency of the joint powers agency, any member of the joint powers agency may determine by resolution to make payment to the joint powers agency of funds in an amount equal to the amount that would be raised by imposition of the plan implementation charge within the boundaries of that member, to be paid at the same time that the plan implementation charge would be collected if imposed.

(e) For the purposes of this section, "joint powers agency" means the Eastern Water Alliance Joint Powers Agency.

(f) For the purposes of this section, "Eastern San Joaquin County Groundwater Basin" means the Eastern San Joaquin County Basin described on pages 38 and 39 of the Department of Water Resources' Bulletin No. 118-80.

*(Added by Stats. 2003, Ch 740.)*

## TITLE 7. PLANNING AND LAND USE

### DIVISION 1. PLANNING AND ZONING

#### CHAPTER 4.5. REVIEW AND APPROVAL OF DEVELOPMENT PROJECTS

##### Article 3. Applications for Development Projects

**65867.5.** (a) A development agreement is a legislative act that shall be approved by ordinance and is subject to referendum.

(b) A development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.

(c) A development agreement that includes a subdivision, as defined in Section 66473.7, shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of Section 66473.7.

*(Amended by Stats. 2001, Ch. 642.)*

**65940.** (a) Each state agency and each local agency shall compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project. Each local agency shall revise the list of information required from an applicant to include a certification of compliance with Section 65962.5, and the statement of application required by Section 65943. Copies of the information, including the statement of application required by Section 65943, shall be made available to all applicants for development projects and to any person who requests the information.

(b) (1) The list of information required from any applicant shall include, where applicable, identification of whether the proposed project is located within 1,000 feet of a military installation, beneath a low-level flight path or within special use airspace as defined in Section 21098 of the Public Resources Code, and within an urbanized area as defined in Section 65944.

(2) The information described in paragraph (1) shall be based on information provided by the Office of Planning and Research pursuant to paragraph (2) of subdivision (d) as of the date of the application. Cities, counties, and cities and counties shall comply with paragraph (1) within 30 days of receiving this notice from the office.

(c) (1) A city, county, or city and county that is not beneath a low-level flight path or not within special use airspace and does not contain a military installation is not required to change its list of information required from applicants to comply with subdivision (b).

(2) A city, county, or city and county that is entirely urbanized, as defined in subdivision (e) of Section 65944, with the exception of a jurisdiction that contains a military installation, is not required to change its list of information required from applicants to comply with subdivision (b).

(d) (1) Subdivision (b) as it relates to the identification of special use airspace, low-level flight paths, military installations, and urbanized areas shall not be operative until the United States Department of Defense provides electronic maps of low-level flight paths, special use airspace, and military installations, at a scale and in an electronic format that is acceptable to the Office of Planning and Research.

(2) Within 30 days of a determination by the Office of Planning and Research that the information provided by the Department of Defense is sufficient and in an acceptable scale and format, the office shall notify cities, counties, and cities and counties of the availability of the information on the Internet.

*(Added by Stats. 1977, Ch. 1200; Amended by Stats. 1982, Ch. 84; Stats. 1986, Ch. 1019; Stats. 1986, Ch. 1048; Stats. 1987, Ch. 985; Stats. 1992, Ch. 1220; Stats. 2004, Ch. 906.)*

**65940.5.** (a) No list compiled pursuant to Section 65940 shall include an extension or waiver of the time periods prescribed by this chapter within which a state or local agency shall act upon an application for a development project.

(b) No application shall be deemed incomplete for lack of an extension or waiver of time periods prescribed by this chapter within which a state or local government agency shall act upon the application.

(c) Except for the extension of the time limits pursuant to Section 65950.1, no public agency shall require an extension or waiver of the time limits contained in this chapter as a condition of accepting or processing the application for a development project.

*(Added by Stats. 1986, Ch. 396; Amended by Stats. 1993, Ch. 1068; Amended by Stats. 1998, Ch. 283.)*

**65941.** (a) The information compiled pursuant to Section 65940 shall also indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project.

(b) If a public agency is a lead or responsible agency for purposes of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, that criteria shall not require the applicant to submit the informational equivalent of an environmental impact report as part of a complete application, or to otherwise require proof of compliance with that act as a prerequisite to a permit application being deemed complete. However, that criteria may require sufficient information to permit the agency to make the determination required by Section 21080.1 of the Public Resources Code.

(c) Consistent with this chapter, a responsible agency shall, at the request of the applicant, commence processing a permit application for a development project prior to final action on the project by a lead agency to the extent that the information necessary to commence the processing is available. For purposes of this subdivision, "lead agency" and "responsible agency" shall have the same

meaning as those terms are defined in Section 21067 of the Public Resources Code and Section 21069 of the Public Resources Code, respectively.

**65941.5.** Each public agency shall notify applicants for development permits of the time limits established for the review and approval of development permits pursuant to Article 3 (commencing with Section 65940) and Article 5 (commencing with Section 65950), of the requirements of subdivision (e) of Section 65962.5, and of the public notice distribution requirements under applicable provisions of law. The public agency shall also notify applicants regarding the provisions of Section 65961. The public agency may charge applicants a reasonable fee not to exceed the amount reasonably necessary to provide the service required by this section. If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit.

**65942.** The information and the criteria specified in Sections 65940, 65941, 65941.5 shall be revised as needed so that they shall be current and accurate at all times. Any revisions shall apply prospectively only and shall not be a basis for determining that an application is not complete pursuant to Section 65943 if the application was received before the revision is effective except for revisions for the following reasons resulting from the conditions which were not known and could not have been known by the public agency at the time the application was received:

(a) To provide sufficient information to permit the public agency to make the determination required by Section 21080.1 of the Public Resources Code, as provided by Section 65941.

(b) To comply with the enactment of new or revised federal, state, or local requirements, except for new or revised requirements of a local agency which is also the lead agency.

**65943.** (a) Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.

(b) Not later than 30 calendar days after receipt of the submitted materials, the public agency shall determine in writing whether they are complete and shall immediately transmit that determination to the applicant. If the written determination is not made within that 30-day period, the application together with the submitted materials shall be deemed complete for purposes of this chapter.

(c) If the application together with the submitted materials are determined not to be complete pursuant to subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both.

There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-day period. Notwithstanding a decision pursuant to subdivision (b) that the application and submitted materials are not complete, if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete for the purposes of this chapter.

(d) Nothing in this section precludes an applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section.

(e) A public agency may charge applicants a fee not to exceed the amount reasonably necessary to provide the service required by this section. If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit.

**65943.5.** (a) Notwithstanding any other provision of this chapter, any appeal pursuant to subdivision (c) of Section 65943 involving a permit application to a board, office, or department within the California Environmental Protection Agency shall be made to the Secretary for Environmental Protection.

(b) Notwithstanding any other provision of this chapter, any appeal pursuant to subdivision (c) of Section 65943 involving an application for the issuance of an environmental permit from an environmental agency shall be made to the Secretary for Environmental Protection under either of the following circumstances:

(1) The environmental agency has not adopted an appeals process pursuant to subdivision (c) of Section 65943.

(2) The environmental agency declines to accept an appeal for a decision pursuant to subdivision (c) of Section 65943.

(c) For purposes of subdivision (b), "environmental permit" has the same meaning as defined in Section 71012 of the Public Resources Code, and "environmental agency" has the same meaning as defined in Section 71011 of the Public Resources Code, except that "environmental agency" does not include the agencies described in subdivisions (c) and (h) of Section 71011 of the Public Resources Code.

**65944.** (a) After a public agency accepts an application as complete, the agency shall not subsequently request of an applicant any new or additional information which was not specified in the list prepared pursuant to Section 65940. The agency may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application.

(b) The provisions of subdivision (a) shall not be construed as requir-

ing an applicant to submit with his or her initial application the entirety of the information which a public agency may require in order to take final action on the application. Prior to accepting an application, each public agency shall inform the applicant of any information included in the list prepared pursuant to Section 65940 which will subsequently be required from the applicant in order to complete final action on the application.

(c) This section shall not be construed as limiting the ability of a public agency to request and obtain information which may be needed in order to comply with the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.

(d)(1) After a public agency accepts an application as complete, and if the project applicant has identified that the proposed project is located within 1,000 feet of a military installation or within special use airspace or beneath a low-level flight path in accordance with Section 65940, the public agency shall provide a copy of the complete application to any branch of the United States Armed Forces that has provided the Office of Planning and Research with a single California mailing address within the state for the delivery of a copy of these applications. This subdivision shall apply only to development applications submitted to a public agency 30 days after the Office of Planning and Research has notified cities, counties, and cities and counties of the availability of Department of Defense information on the Internet pursuant to subdivision (d) of Section 65940.

(2) Except for a project within 1,000 feet of a military installation, the public agency is not required to provide a copy of the application if the project is located entirely in an "urbanized area." An urbanized area is any urban location that meets the definition used by the United State Department of Commerce's Bureau of Census for "urban" and includes locations with core census block groups containing at least 1,000 people per square mile and surrounding census block groups containing at least 500 people per square mile.

(e) Upon receipt of a copy of the application as required in subdivision (d), any branch of the United States Armed Forces may request consultation with the public agency and the project applicant to discuss the effects of the proposed project on military installations, low-level flight paths, or special use airspace, and potential alternatives and mitigation measures.

(f)(1) Subdivisions (d), (e), and (f) as these relate to low-level flight paths, special use airspace, and urbanized areas shall not be operative until the United States Department of Defense provides electronic maps of low-level flight paths, special use airspace, and military installations, at a scale and in an electronic format that is acceptable to the Office of Planning and Research.

(2) Within 30 days of a determination by the Office of Planning and Research that the information provided by the Department of Defense is sufficient and in an acceptable scale and format, the office shall notify cities, counties, and cities and counties of the availability of the information on the Internet. Cities, counties, and cities and counties shall comply with subdivision (d) within 30 days of receiving this notice from the office.

*(Added by Stats. 1977, Ch. 1200; Amended by Stats. 1978, Ch. 1113; Stats. 1982, Ch. 84; Stats. 2004, Ch. 906.)*

**65945.** (a) At the time of filing an application for a development permit with a city or county, the city or county shall inform the applicant that he or she may make a written request to receive notice from the city or county of a proposal to adopt or amend any of the following plans or ordinances:

- (1) A general plan.
- (2) A specific plan.
- (3) A zoning ordinance.
- (4) An ordinance affecting building permits or grading permits.

The applicant shall specify, in the written request, the types of proposed action for which notice is requested. Prior to taking any of those actions, the city or county shall give notice to any applicant who has requested notice of the type of action proposed and whose development project is pending before the city or county if the city or county determines that the proposal is reasonably related to the applicant's request for the development permit. Notice shall be given only for those types of actions which the applicant specifies in the request for notification.

The city or county may charge the applicant for a development permit, to whom notice is provided pursuant to this subdivision, a reasonable fee not to exceed the actual cost of providing that notice. If a fee is charged pursuant to this subdivision, the fee shall be collected as part of the application fee charged for the development permit.

(b) As an alternative to the notification procedure prescribed by subdivision (a), a city or county may inform the applicant at the time of filing an application for a development permit that he or she may subscribe to a periodically updated notice or set of notices from the city or county which lists pending proposals to adopt or amend any of the plans or ordinances specified in subdivision (a), together with the status of the proposal and the date of any hearings thereon which have been set.

Only those proposals which are general, as opposed to parcel-specific in nature, and which the city or county determines are reasonably related to requests for development permits, need be listed in the notice. No proposal shall be required to be listed until such time as the first public hearing thereon has been set.

The notice shall be updated and mailed at least once every six weeks; except that a notice need not be updated and mailed until a change in its contents is required.

The city or county may charge the applicant for a development permit, to whom notice is provided pursuant to this subdivision, a reasonable fee not to exceed the actual cost of providing that notice, including the costs of updating the notice, for the length of time the applicant requests to be sent the notice or notices.

**65945.3.** At the time of filing an application for a development permit with a local agency, other than a city or county, the local agency shall inform the applicant that he or she may make a written request to receive notice of any proposal to adopt or amend a rule or regulation affecting the issuance of development permits. Prior to adopting or amending any such rule or regulation, the local agency shall give notice to any applicant who has requested such notice and whose development project is pending before the agency if the local agency determines that the proposal is reasonably related to the applicant's request for the development permit.

The local agency may charge the applicant for a development permit, to

whom notice is provided pursuant to this section, a reasonable fee not to exceed the actual cost of providing that notice. If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit.

**65945.5.** At the time of filing an application for a development permit with a state agency, the state agency shall inform the applicant that he or she may make a written request to receive notice of any proposal to adopt or amend a regulation affecting the issuance of development permits and which implements a statutory provision.

Prior to adopting or amending any such regulation, the state agency shall give notice to any applicant who has requested such notice and whose development project is pending before the state agency if the state agency determines that the proposal is reasonably related to the applicant's request for the development permit.

**65945.7.** No action, inaction, or recommendation regarding any ordinance, rule, or regulation subject to this Section 65945, 65945.3, or 65945.5 by any legislative body, administrative body, or the officials of any state or local irregularity, informality, neglect or omission (hereinafter called "error") as to any matter pertaining to notices, records, determinations, publications or any matters of procedure whatever, unless after an examination of the entire case, including evidence, the court shall be of the opinion that the error complained of was prejudicial, and that by reason of such error the party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error had not occurred or existed. There shall be no presumption that error is prejudicial or that injury was done if error is shown.

### **Article 5. Approval of Development Permits**

**65950.** (a) Any public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:

(1) One hundred eighty days from the date of certification by the lead agency of the environmental impact report if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project.

(2) Ninety days from the date of certification by the lead agency of the environmental impact report if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project and all of the following conditions are met:

(A) At least 49 percent of the units in the development project are affordable to very low or low-income households, as defined by Sections 50105 and 50079.5 of the Health and Safety Code, respectively. Rents for the lower income units shall be set at an affordable rent, as that term is defined in Section 50053 of the Health and Safety Code, for at least 30 years. Owner-occupied units shall be

available at an affordable housing cost, as that term is defined in Section 50052.5 of the Health and Safety Code.

(B) Prior to the application being deemed complete for the development project pursuant to Article 3 (commencing with Section 65940), the lead agency received written notice from the project applicant that an application has been made or will be made for an allocation or commitment of financing, tax credits, bond authority, or other financial assistance from a public agency or federal agency, and the notice specifies the financial assistance that has been applied for or will be applied for and the deadline for application for that assistance, the requirement that one of the approvals of the development project by the lead agency is a prerequisite to the application for or approval of the application for financial assistance, and that the financial assistance is necessary for the project to be affordable as required pursuant to subparagraph (A).

(C) There is confirmation that the application has been made to the public agency or federal agency prior to certification of the environmental impact report.

(3) Sixty days from the date of adoption by the lead agency of the negative declaration if a negative declaration is completed and adopted for the development project.

(4) Sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) if the project is exempt from the California Environmental Quality Act.

(b) This section does not preclude a project applicant and a public agency from mutually agreeing in writing to an extension of any time limit provided by this section pursuant to Section 65957.

(c) For purposes of paragraph (2) of subdivision (a), “development project” means a use consisting of either of the following:

(1) Residential units only.

(2) Mixed-use developments consisting of residential and nonresidential uses in which the nonresidential uses are less than 50 percent of the total square footage of the development and are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, “neighborhood commercial” means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(d) For purposes of this section, “lead agency” and “negative declaration” shall have the same meaning as those terms have in Sections 21067 and 21064 of the Public Resources Code, respectively.

*(Added by Stats. 1977, Ch. 1200; Amended by Stats. 1999, Ch. 968; Amended by Stats 2006, Ch. 888.)*

**65950.1.** Notwithstanding Section 65950, if there has been an extension of time pursuant to Section 21100.2 or 21151.5 of the Public Resources Code to complete and certify the environmental impact report, the lead agency shall approve or disapprove the project within 90 days after certification of the environmental impact report.

*(Added by Stats. 1977, Ch. 1200; Amended by Stats. 1998, Ch. 283.)*

**65951.** In the event that a combined environmental impact report-environmental impact statement is being prepared on a development project pursuant to Section 21083.6 of the Public Resources Code, a lead agency shall approve or disapprove the project within 90 days after the combined environmental impact report-environmental impact statement has been completed and adopted.

*(Added by Stats. 1977, Ch. 1200; Amended by Stats. 1998, Ch. 283.)*

**65952.** (a) Any public agency which is a responsible agency for a development project that has been approved by the lead agency shall approve or disapprove the development project within whichever of the following periods of time is longer:

(1) Within 180 days from the date on which the lead agency has approved the project.

(2) Within 180 days of the date on which the completed application for the development project has been received and accepted as complete by that responsible agency.

(b) At the time a decision by a lead agency to disapprove a development project becomes final, applications for that project which are filed with responsible agencies shall be deemed withdrawn.

**65952.1.** (a) Except as otherwise provided in subdivision (b), where a development project consists of a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7), the time limits established by Sections 65950 and 65952 shall apply to the approval or disapproval of the tentative map, or the parcel map for which a tentative map is not required.

(b) The time limits specified in Sections 66452.1, 66452.2, and 66463 for tentative maps and parcel maps for which a tentative map is not required, shall continue to apply and are not extended by the time limits specified in subdivision (a).

**65952.2.** No public agency shall disapprove an application for a development project in order to comply with the time limits specified in this chapter. Any disapproval of an application for a development project shall specify reasons for disapproval other than the failure to timely act in accordance with the time limits specified in this chapter.

**65953.** All time limits specified in this article are maximum time limits for approving or disapproving development projects. All public agencies shall, if possible, approve or disapprove development projects in shorter periods of time.

**65954.** The time limits established by this article shall not apply in the event that federal statutes or regulations require time schedules which exceed such time limits.

**65955.** The time limits established by this article shall not apply to applications to appropriate water where such applications have been protested pursuant to Chapter 4 (commencing with Section 1330) of Part 2 of Division 2 of the Water Code, or

to petitions for changes pursuant to Chapter 10 (commencing with Section 1700) of Part 2 of Division 2 of the Water Code.

**65956.** (a) If any provision of law requires the lead agency or responsible agency to provide public notice of the development project or to hold a public hearing, or both, on the development project and the agency has not provided the public notice or held the hearing, or both, at least 60 days prior to the expiration of the time limits established by Sections 65950 and 65952, the applicant or his or her representative may file an action pursuant to Section 1085 of the Code of Civil Procedure to compel the agency to provide the public notice or hold the hearing, or both, and the court shall give the proceedings preference over all other civil actions or proceedings, except older matters of the same character.

(b) In the event that a lead agency or a responsible agency fails to act to approve or to disapprove a development project within the time limits required by this article, the failure to act shall be deemed approval of the permit application for the development project. However, the permit shall be deemed approved only if the public notice required by law has occurred. If the applicant has provided seven days advance notice to the permitting agency of the intent to provide public notice, then no earlier than 60 days from the expiration of the time limits established by Sections 65950 and 65952, an applicant may provide the required public notice using the distribution information provided pursuant to Section 65941.5. If the applicant chooses to provide public notice, that notice shall include a description of the proposed development substantially similar to the descriptions which are commonly used in public notices by the permitting agency, the location of the proposed development, the permit application number, the name and address of the permitting agency, and a statement that the project shall be deemed approved if the permitting agency has not acted within 60 days. If the applicant has provided the public notice required by this section, the time limit for action by the permitting agency shall be extended to 60 days after the public notice is provided. If the applicant provides notice pursuant to this section, the permitting agency shall refund to the applicant any fees which were collected for providing notice and which were not used for that purpose.

(c) Failure of an applicant to submit complete or adequate information pursuant to Sections 65943 to 65944, inclusive, may constitute grounds for disapproving a development project.

(d) Nothing in this section shall diminish the permitting agency's legal responsibility to provide, where applicable, public notice and hearing before acting on a permit application.

*(Added by Stats. 1977, Ch. 1200; Amended by Stats. 1999, Ch. 550.)*

**65956.5.** (a) Prior to an applicant providing advance notice to an environmental agency of the intent to provide public notice pursuant to subdivision (b) of Section 65956 for action on an environmental permit, the applicant may submit an appeal in writing to the governing body of the environmental agency, or if there is no governing body, to the director of the environmental agency, as provided by the environmental agency, for a determination regarding the failure by the environmental agency to take timely action on the issuance or denial of the environmental permit in accordance with the time limits specified in this chapter.

(b) There shall be a final written determination by the environmental agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The final written determination by the environmental agency shall specify both of the following:

(1) The reason or reasons for failing to act pursuant to the time limits in this chapter.

(2) A date by which the environmental agency shall act on the permit application.

(c) Notwithstanding any other provision of this chapter, any appeal submitted pursuant to subdivision (a) involving an environmental permit from an environmental agency shall be made to the Secretary for Environmental Protection if the environmental agency declines to accept the appeal for a decision pursuant to subdivision (a) or the environmental agency does not make a final written determination pursuant to subdivision (b).

(d) Any appeal submitted pursuant to subdivision (a) involving an environmental permit to a board, office, or department within the California Environmental Protection Agency shall be made to the Secretary for Environmental Protection.

(e) For purposes of this section, "environmental permit" has the same meaning as defined in Section 71012 of the Public Resources Code, and "environmental agency" has the same meaning as defined in Section 71011 of the Public Resources Code, except that "environmental agency" does not include the agencies described in subdivisions (c) and (h) of Section 71011 of the Public Resources Code.

**65957.** The time limits established by Sections 65950, 65950.1, 65951, and 65952 may be extended once upon mutual written agreement of the project applicant and the public agency for a period not to exceed 90 days from the date of the extension. No other extension, continuance, or waiver of these time limits either by the project applicant or the lead agency shall be permitted, except as provided in this section and Section 65950.1. Failure of the lead agency to act within these time limits may result in the project being deemed approved pursuant to the provisions of subdivision (b) of Section 65956.

*(Added by Stats. 1977, Ch. 1200; Amended by Stats. 1998, Ch. 283.)*

**65957.1.** In the event that a development project requires more than one approval by a public agency, such agency may establish time limits (1) for submitting the information required in connection with each separate request for approval and (2) for acting upon each such request; provided, however, that the time period for acting on all such requests shall not, in aggregate, exceed those limits specified in Sections 65950 and 65952.

**65957.5.** (a) Whenever the director of a Department of Transportation highway district recommends to a public agency considering an application to subdivide real property or to issue a construction permit that the agency impose certain conditions on its approval of the application, the applicant may appeal the district director's recommendation.

(b) The Department of Transportation shall adopt regulations prescribing procedures for effecting an appeal pursuant to subdivision (a). The appeal shall be made in writing to the Director of Transportation. The director's decision on the appeal shall be rendered within 60 calendar days after receipt of the appeal, and the director's written determination shall be transmitted to the appellant and to the agency to whom the appealed recommendation was made. The adopted regulations shall require the appellant to pay to the department a fee of not more than 50 percent of the estimated administrative cost to the department of conducting the appeal.

(c) The appeal process, including the director's written determination, shall be completed at least 60 days prior to completion of the period of public review for a draft environmental impact report or a negative declaration prescribed by Section 21091 of the Public Resources Code.

**65965.** (a) For purposes of this chapter, the following definitions apply:

(1) "Direct protection" means the protection and preservation of natural lands or resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, or outdoor recreational areas.

(2) "Stewardship" encompasses the range of activities involved in controlling, monitoring, and managing for conservation purposes a property, or a conservation or open-space easement, as defined by the terms of the easement, and its attendant resources.

(b) Notwithstanding any other provision of law, if a state or local public agency requires a property owner to transfer to the agency an interest in real property to mitigate any adverse impact upon natural resources caused by permitting the development of a project or facility, the state or local public agency may authorize a nonprofit organization to hold title to and manage that interest in real property, provided that the nonprofit organization is all of the following:

(1) Exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code, and qualified to do business in the state.

(2) A "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code.

(3) An organization that has as its principal purpose and activity the direct protection or stewardship of natural land or resources, or cultural or historic resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas.

(c) The recorded instrument that places title with a nonprofit organization pursuant to subdivision (b) shall include, at a minimum, a provision that if the state or local public agency that authorized the nonprofit organization to hold the title, or its successor agency, determines that the interest in real property that is held by the nonprofit organization is not being held, monitored, or managed for conservation purposes in the manner specified in that instrument or in the mitigation agreement between the state or local public agency and the nonprofit organization, the interest in real property shall revert to the state or that local public agency, or to another public agency or nonprofit organization qualified pursuant to subdivision (b), approved by the state or local public agency.

(d) A state or local public agency shall exercise due diligence in reviewing the qualifications of a nonprofit organization to effectively manage and steward natural land or resources. The state or local public agency may adopt guidelines to assist the agency in that review process.

*(Added by Stats. 2006, Ch. 577.)*

**66455.3.** Not later than five days after a city or county has determined that a tentative map application for a proposed subdivision, as defined in Section 66473.7, is complete pursuant to Section 65943, the local agency shall send a copy of the application to any water supplier that is, or may become, a public water system, as defined in Section 10912 of the Water Code, that may supply water for the subdivision.

*(Added by Stats. 2001, Ch. 642.)*

**66473.7.** (a) For the purposes of this section, the following definitions apply:

(1) "Subdivision" means a proposed residential development of more than 500 dwelling units, except that for a public water system that has fewer than 5,000 service connections, "subdivision" means any proposed residential development that would account for an increase of 10 percent or more in the number of the public water system's existing service connections.

(2) "Sufficient water supply" means the total water supplies available during normal, single-dry, and multiple-dry years within a 20-year projection that will meet the projected demand associated with the proposed subdivision, in addition to existing and planned future uses, including, but not limited to, agricultural and industrial uses. In determining "sufficient water supply," all of the following factors shall be considered:

(A) The availability of water supplies over a historical record of at least 20 years.

(B) The applicability of an urban water shortage contingency analysis prepared pursuant to Section 10632 of the Water Code that includes actions to be undertaken by the public water system in response to water supply shortages.

(C) The reduction in water supply allocated to a specific water use sector pursuant to a resolution or ordinance adopted, or a contract entered into, by the public water system, as long as that resolution, ordinance, or contract does not conflict with Section 354 of the Water Code.

(D) The amount of water that the water supplier can reasonably rely on receiving from other water supply projects, such as conjunctive use, reclaimed water, water conservation, and water transfer, including programs identified under federal, state, and local water initiatives such as CALFED and Colorado River tentative agreements, to the extent that these water supplies meet the criteria of subdivision (d).

(3) "Public water system" means the water supplier that is, or may become as a result of servicing the subdivision included in a tentative map pursuant to subdivision (b), a public water system, as defined in Section 10912 of the Water Code, that may supply water for a subdivision.

(b)(1) The legislative body of a city or county or the advisory agency, to the extent that it is authorized by local ordinance to approve, conditionally approve,

or disapprove the tentative map, shall include as a condition in any tentative map that includes a subdivision a requirement that a sufficient water supply shall be available. Proof of the availability of a sufficient water supply shall be requested by the subdivision applicant or local agency, at the discretion of the local agency, and shall be based on written verification from the applicable public water system within 90 days of a request.

(2) If the public water system fails to deliver the written verification as required by this section, the local agency or any other interested party may seek a writ of mandamus to compel the public water system to comply.

(3) If the written verification provided by the applicable public water system indicates that the public water system is unable to provide a sufficient water supply that will meet the projected demand associated with the proposed subdivision, then the local agency may make a finding, after consideration of the written verification by the applicable public water system, that additional water supplies not accounted for by the public water system are, or will be, available prior to completion of the subdivision that will satisfy the requirements of this section. This finding shall be made on the record and supported by substantial evidence.

(4) If the written verification is not provided by the public water system, notwithstanding the local agency or other interested party securing a writ of mandamus to compel compliance with this section, then the local agency may make a finding that sufficient water supplies are, or will be, available prior to completion of the subdivision that will satisfy the requirements of this section. This finding shall be made on the record and supported by substantial evidence.

(c) The applicable public water system's written verification of its ability or inability to provide a sufficient water supply that will meet the projected demand associated with the proposed subdivision as required by subdivision (b) shall be supported by substantial evidence. The substantial evidence may include, but is not limited to, any of the following:

(1) The public water system's most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with Section 10610) of Division 6 of the Water Code.

(2) A water supply assessment that was completed pursuant to Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code.

(3) Other information relating to the sufficiency of the water supply that contains analytical information that is substantially similar to the assessment required by Section 10635 of the Water Code.

(d) When the written verification pursuant to subdivision (b) relies on projected water supplies that are not currently available to the public water system, to provide a sufficient water supply to the subdivision, the written verification as to those projected water supplies shall be based on all of the following elements, to the extent each is applicable:

(1) Written contracts or other proof of valid rights to the identified water supply that identify the terms and conditions under which the water will be available to serve the proposed subdivision.

(2) Copies of a capital outlay program for financing the delivery of a sufficient water supply that has been adopted by the applicable governing body.

(3) Securing of applicable federal, state, and local permits for construction of necessary infrastructure associated with supplying a sufficient water supply.

(4) Any necessary regulatory approvals that are required in order to be able to convey or deliver a sufficient water supply to the subdivision.

(e) If there is no public water system, the local agency shall make a written finding of sufficient water supply based on the evidentiary requirements of subdivisions (c) and (d) and identify the mechanism for providing water to the subdivision.

(f) In making any findings or determinations under this section, a local agency, or designated advisory agency, may work in conjunction with the project applicant and the public water system to secure water supplies sufficient to satisfy the demands of the proposed subdivision. If the local agency secures water supplies pursuant to this subdivision, which supplies are acceptable to and approved by the governing body of the public water system as suitable for delivery to customers, it shall work in conjunction with the public water system to implement a plan to deliver that water supply to satisfy the long-term demands of the proposed subdivision.

(g) The written verification prepared under this section shall also include a description, to the extent that data is reasonably available based on published records maintained by federal and state agencies, and public records of local agencies, of the reasonably foreseeable impacts of the proposed subdivision on the availability of water resources for agricultural and industrial uses within the public water system's service area that are not currently receiving water from the public water system but are utilizing the same sources of water. To the extent that those reasonably foreseeable impacts have previously been evaluated in a document prepared pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or the National Environmental Policy Act (Public Law 91-190) for the proposed subdivision, the public water system may utilize that information in preparing the written verification.

(h) Where a water supply for a proposed subdivision includes groundwater, the public water system serving the proposed subdivision shall evaluate, based on substantial evidence, the extent to which it or the landowner has the right to extract the additional groundwater needed to supply the proposed subdivision. Nothing in this subdivision is intended to modify state law with regard to groundwater rights.

(i) This section shall not apply to any residential project proposed for a site that is within an urbanized area and has been previously developed for urban uses, or where the immediate contiguous properties surrounding the residential project site are, or previously have been, developed for urban uses, or housing projects that are exclusively for very low and low-income households.

(j) The determinations made pursuant to this section shall be consistent with the obligation of a public water system to grant a priority for the provision of available and future water resources or services to proposed housing developments that help meet the city's or county's share of the regional housing needs for lower income households, pursuant to Section 65589.7.

(k) The County of San Diego shall be deemed to comply with this section if the Office of Planning and Research determines that all of the following conditions have been met:

(1) A regional growth management strategy that provides for a comprehensive regional strategy and a coordinated economic development and growth management program has been developed pursuant to Proposition C as approved by the voters of the County of San Diego in November 1988, which required the development of a regional growth management plan and directed the establishment of a regional planning and growth management review board.

(2) Each public water system, as defined in Section 10912 of the Water Code, within the County of San Diego has adopted an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) of the Water Code.

(3) The approval or conditional approval of tentative maps for subdivisions, as defined in this section, by the County of San Diego and the cities within the county requires written communications to be made by the public water system to the city or county, in a format and with content that is substantially similar to the requirements contained in this section, with regard to the availability of a sufficient water supply, or the reliance on projected water supplies to provide a sufficient water supply, for a proposed subdivision.

(l) Nothing in this section shall preclude the legislative body of a city or county, or the designated advisory agency, at the request of the applicant, from making the determinations required in this section earlier than required pursuant to subdivision (b).

(m) Nothing in this section shall be construed to create a right or entitlement to water service or any specific level of water service.

(n) Nothing in this section is intended to change existing law concerning a public water system's obligation to provide water service to its existing customers or to any potential future customers.

(o) Any action challenging the sufficiency of the public water system's written verification of a sufficient water supply shall be governed by Section 66499.37.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

*(Added by Stats. 2001, Ch. 642; Amended by Stats. 2004, Ch. 118.)*

## **BUSINESS AND PROFESSIONS CODE**

### **DIVISION 4. REAL ESTATE**

#### **PART 2. REGULATION OF TRANSACTIONS**

##### **CHAPTER 1.**

##### **SUBDIVIDED LANDS**

##### **Article 2.**

##### **Investigation, Regulation and Report**

11010. (a) Except as otherwise provided pursuant to subdivision (c) or elsewhere in this chapter, any Person who intends to offer subdivided lands within this state for sale or lease shall file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire on a form prepared by the department.

(b) The notice of intention shall contain the following information about the subdivided lands and the proposed offering:

- (1) The name and address of the owner.
- (2) The name and address of the subdivider.
- (3) The legal description and area of lands.

(4) A true statement of the condition of the title to the land, particularly including all encumbrances thereon.

(5) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any contracts intended to be used.

(6) A true statement of the provisions, if any, that have been made for public utilities in the proposed subdivision, including water, electricity, gas, telephone, and sewerage facilities. For subdivided lands that were subject to the imposition of a condition pursuant to subdivision (b) of Section 66473.7 of the Government Code, the true statement of the provisions made for water shall be satisfied by submitting a copy of the written verification of the available water supply obtained pursuant to Section 66473.7 of the Government Code.

(7) A true statement of the use or uses for which the proposed subdivision will be offered.

(8) A true statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision.

(9) A true statement of the amount of indebtedness that is a lien upon the subdivision or any part thereof, and that was incurred to pay for the construction of any onsite or offsite improvement, or any community or recreational facility.

(10) A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area, assessment district, or community facilities district within the boundaries of which, the subdivision, or any part thereof, is located, and that is to pay for the construction or installation of any

improvement or to furnish community or recreational facilities to that subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision, or any part thereof.

(11) A notice pursuant to Section 1102.6c of the Civil Code.

(12) (A) As to each school district serving the subdivision, a statement from the appropriate district that indicates the location of each high school, junior high school, and elementary school serving the subdivision, or documentation that a statement to that effect has been requested from the appropriate school district.

(B) In the event that, as of the date the notice of intention and application for issuance of a public report are otherwise deemed to be qualitatively and substantially complete pursuant to Section 11010.2, the statement described in subparagraph (A) has not been provided by any school district serving the subdivision, the person who filed the notice of intention and application for issuance of a public report shall immediately provide the department with the name, address, and telephone number of that district.

(13) (A) The location of all existing airports, and of all proposed airports shown on the general plan of any city or county, located within two statute miles of the subdivision. If the property is located within an airport influence area, the following statement shall be included in the notice of intention:

#### NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

(B) For purposes of this section, an “airport influence area,” also known as an “airport referral area,” is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.

(14) A true statement, if applicable, referencing any soils or geologic report or soils and geologic reports that have been prepared specifically for the subdivision.

(15) A true statement of whether or not fill is used, or is proposed to be used, in the subdivision and a statement giving the name and the location of the public agency where information concerning soil conditions in the subdivision is available.

(16) On or after July 1, 2005, as to property located within the jurisdiction of the San Francisco Bay Conservation and Development Commission, a statement that the property is so located and the following notice:

### NOTICE OF SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION JURISDICTION

This property is located within the jurisdiction of the San Francisco Bay Conservation and Development Commission. Use and development of property within the commission's jurisdiction may be subject to special regulations, restrictions, and permit requirements. You may wish to investigate and determine whether they are acceptable to you and your intended use of the property before you complete your transaction.

(17) If the property is presently located within one mile of a parcel of real property designated as "Prime Farmland," "Farmland of Statewide Importance," "Unique Farmland," "Farmland of Local Importance," or "Grazing Land" on the most current "Important Farmland Map" issued by the California Department of Conservation, Division of Land Resource Protection, utilizing solely the county-level GIS map data, if any, available on the Farmland Mapping and Monitoring Program Website. If the residential property is within one mile of a designated farmland area, the report shall contain the following notice:

#### NOTICE OF RIGHT TO FARM

This property is located within one mile of a farm or ranch land designated on the current county-level GIS "Important Farmland Map," issued by the California Department of Conservation, Division of Land Resource Protection. Accordingly, the property may be subject to inconveniences or discomforts resulting from agricultural operations that are a normal and necessary aspect of living in a community with a strong rural character and a healthy agricultural sector. Customary agricultural practices in farm operations may include, but are not limited to, noise, odors, dust, light, insects, the operation of pumps and machinery, the storage and disposal of manure, bee pollination, and the ground or aerial application of fertilizers, pesticides, and herbicides. These agricultural practices may occur at any time during the 24-hour day. Individual sensitivities to those practices can vary from person to person. You may wish to consider the impacts of such agricultural practices before you complete your purchase. Please be advised that you may be barred from obtaining legal remedies against agricultural practices conducted in a manner consistent with proper and accepted customs and standards pursuant to Section 3482.5 of the Civil Code or any pertinent local ordinance.

(18) Any other information that the owner, his or her agent, or the subdivider may desire to present.

(c) The commissioner may, by regulation, or on the basis of the particular circumstances of a proposed offering, waive the requirement of the submission of a completed questionnaire if the commissioner determines that prospective purchasers or lessees of the subdivision interests to be offered will be adequately protected through the issuance of a public report based solely upon information contained in the notice of intention.

*(Amended by Stats. 2001, Ch. 642; Stats. 2002, Ch. 496; Stats. 2004, Ch. 618; Stats. 2005, Ch. 392; Amended by Stats. 2008, Ch. 686)*



CALIFORNIA

# Water Boards

## STATE WATER RESOURCES CONTROL BOARD REGIONAL WATER QUALITY CONTROL BOARDS

P.O. Box 100, Sacramento, CA 95812-0100 • www.waterboards.ca.gov  
info@waterboards.ca.gov

Office of Public Affairs: (916) 341-5254  
Office of Legislative Affairs: (916) 341-5251

Financial Assistance information: (916) 341-5700  
Water Quality information: (916) 341-5455  
Water Rights information: (916) 341-5300

### CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS

**NORTH COAST REGION (1)**  
www.waterboards.ca.gov/northcoast  
5550 Skyline Blvd., Suite A  
Santa Rosa, CA 95403  
info1@waterboards.ca.gov

(707) 576-2220 TEL • (707) 523-0135 FAX

**SAN FRANCISCO BAY REGION (2)**  
www.waterboards.ca.gov/sanfranciscobay  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
info2@waterboards.ca.gov

(510) 622-2300 TEL • (510) 622-2460 FAX

**CENTRAL COAST REGION (3)**  
www.waterboards.ca.gov/centralcoast  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401  
info3@waterboards.ca.gov

(805) 549-3147 TEL • (805) 543-0397 FAX

**LOS ANGELES REGION (4)**  
www.waterboards.ca.gov/losangeles  
320 W. 4th Street, Suite 200  
Los Angeles, CA 90013  
info4@waterboards.ca.gov

(213) 576-6600 TEL • (213) 576-6640 FAX

**CENTRAL VALLEY REGION (5)**  
www.waterboards.ca.gov/centralvalley  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670  
info5@waterboards.ca.gov

(916) 464-3291 TEL • (916) 464-4645 FAX

Fresno branch office  
1685 E Street, Suite 200  
Fresno, CA 93706  
(559) 445-5116 TEL • (559) 445-5910 FAX

Redding branch office  
415 Knollcrest Drive  
Redding, CA 96002  
(530) 224-4845 TEL • (530) 224-4857 FAX

**LAHONTAN REGION (6)**  
www.waterboards.ca.gov/lahontan  
2501 Lake Tahoe Blvd.  
South Lake Tahoe, CA 96150  
info6@waterboards.ca.gov

(530) 542-5400 TEL • (530) 544-2271 FAX

Victorville branch office  
14440 Civic Drive, Suite 200  
Victorville, CA 92392

(760) 241-6583 TEL • (760) 241-7308 FAX

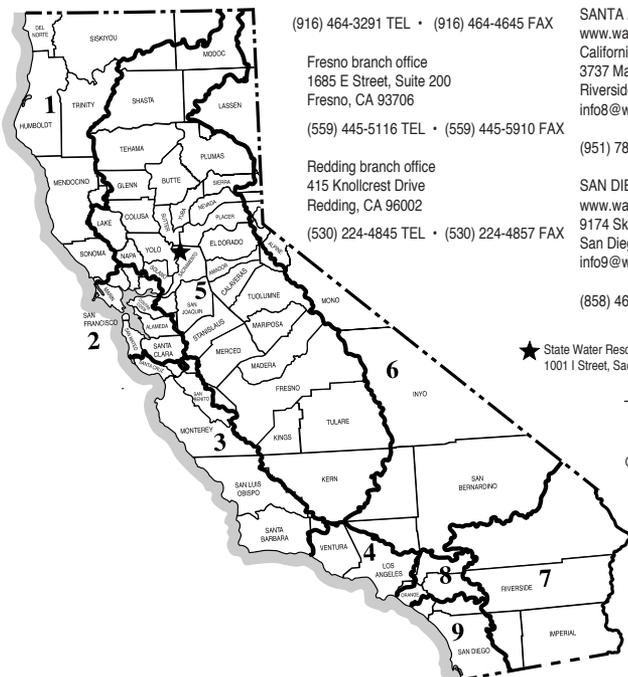
**COLORADO RIVER BASIN REGION (7)**  
www.waterboards.ca.gov/coloradoriver  
73-720 Fred Waring Dr., Suite 100  
Palm Desert, CA 92260  
info7@waterboards.ca.gov  
(760) 346-7491 TEL • (760) 341-6820 FAX

**SANTA ANA REGION (8)**  
www.waterboards.ca.gov/santaana  
California Tower  
3737 Main Street, Suite 500  
Riverside, CA 92501-3339  
info8@waterboards.ca.gov

(951) 782-4130 TEL • (951) 781-6288 FAX

**SAN DIEGO REGION (9)**  
www.waterboards.ca.gov/sandiego  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123  
info9@waterboards.ca.gov

(858) 467-2952 TEL • (858) 571-6972 FAX



★ State Water Resources Control Board (Headquarters)  
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State of California  
Jerry Brown, Governor

California Environmental Protection Agency  
Matt Rodriguez, Secretary

State Water Resources Control Board  
Charles R. Hoppin, Chair