

PREPRINT SENATE BILL No. 2

Proposed by Senator Pavley

August 4, 2009

An act to amend Sections 6103.1 and 6103.4 of the Government Code, and to amend Sections 1052, 1055, 1055.2, 1126, 1525, 1535, 1538, 1551, 1825, 1831, 1845, 2525, 2526, 2550, 2763.5, and 5106 of, to add Sections 1051.1, 1055.5, 1240.5, 1846, and 1847 to, to add Chapter 3.5 (commencing with Section 1110) to Part 1 of Division 2 of, to add Part 2.11 (commencing with Section 10920) to Division 6 of, and to repeal and add Section 12924 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

Preprint SB 2, as proposed, Pavley. Water: diversion and use: groundwater.

(1) Existing law generally provides that the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, may not be required to pay any fee for the performance of an official service. Existing law exempts from this provision any fee or charge for official services required pursuant to specified provisions of law relating to water use or water quality.

This bill would expand the exemption to other provisions relating to water use, including provisions that require the payment of fees to the State Water Resources Control Board (board) for official services relating to statements of water diversion and use.

(2) The California Constitution requires the reasonable and beneficial use of water. Under the public trust doctrine, the board, among other state agencies, is required to take the public trust into account in the planning and allocation of water resources and to protect the public



SB 2 2009

trust whenever feasible. The board and the California regional water quality control boards (regional boards) are required to set forth water quality objectives in state and regional water quality control plans. Existing law establishes the Water Rights Fund, which consists of various fees and penalties. The moneys in the Water Rights Fund are available, upon appropriation by the Legislature, for the administration of the board's water rights program.

This bill would authorize the board to issue, on its own motion or upon the petition of an interested party, an interim relief order in appropriate circumstances to implement or enforce these and related provisions of law. A person or entity that violates any interim relief order issued by the board would be liable to the board for a civil penalty in an amount not to exceed \$5,000 for each day in which a violation occurs. These funds would be deposited in the Water Rights Fund.

(3) Existing law authorizes the board to investigate all streams, stream systems, lakes, or other bodies of water, take testimony relating to the rights to water or the use of water, and ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the state. Existing law requires the board to take appropriate actions to prevent waste or the unreasonable use of water. Under existing law, the board makes determinations with regard to the availability of recycled water.

This bill would authorize the board, in conducting an investigation or proceeding for these purposes, to order any person or entity that diverts water or uses water to submit, under penalty of perjury, any technical or monitoring report related to the diversion or use of water by that person or entity. By expanding the definition of the crime of perjury, the bill would impose a state-mandated local program. The bill would authorize the board, in connection with the investigation or proceeding, to inspect the facilities of any person or entity to determine compliance with specified water use requirements.

(4) Existing law authorizes the board, upon the submission of a petition signed by a claimant to water of any stream system requesting a determination of rights among the claimants to that water, to enter an order granting the petition. After granting the petition, the board is required to investigate the stream system to gather information necessary to make a determination of the water rights of that stream system.

This bill would authorize the board to initiate a determination of rights under its own motion if after a hearing it finds that the public interest and necessity will be served by a determination of rights.

(5) Existing law declares that the diversion or use of water other than as authorized by specified provisions of law is a trespass. Existing law authorizes the administrative imposition of civil liability by the board for a trespass in an amount not to exceed \$500 for each day in which the trespass occurs. Moneys generated by the imposition of civil liability under these provisions are deposited in the Water Rights Fund.

This bill would provide that a person or entity committing a trespass may be liable in an amount not to exceed the sum of \$1,000 for each day in which the trespass occurs and \$1,000 for each acre-foot of water diverted or used other than as authorized by those specified provisions of law.

(6) Existing law, with certain exceptions, requires each person who, after December 31, 1965, diverts water to file with the board a statement of diversion and use.

This bill would establish a rebuttable presumption, in any proceeding before the board in which it is alleged that an appropriative right has ceased or is subject to prescribed action, that no use required to be included in a statement of diversion and use occurred unless that use is included in a statement that is submitted to the board within a specified time period.

The bill would require a person who files a statement of diversion and use, and certain petitions involving a change in a water right, to pay an annual fee, for deposit in the Water Rights Fund. The bill would include as recoverable costs, for which the board may be reimbursed from the fund upon appropriation therefor, costs incurred in connection with carrying out requirements relating to the statements of diversion and use and the performance of duties under the public trust doctrine and provisions that require the reasonable use of water.

(7) Existing law authorizes the board to issue a cease and desist order against a person who is violating, or threatening to violate, certain requirements, including requirements set forth in a decision or order relating to the unauthorized use of water. Any person who violates a cease and desist order may be liable in an amount not to exceed \$1,000 for each day in which the violation occurs. Revenue generated from these penalties is deposited in the Water Rights Fund.

This bill would authorize the board to issue a cease and desist order in response to a violation of certain requirements relating to the unauthorized diversion or use of water or of a reporting or monitoring requirement established under a decision, order, or regulation adopted by the board pursuant to various provisions of law, including the public

trust doctrine. The bill would increase the civil penalties that apply to a person who violates a cease and desist order by subjecting a violator to a civil penalty in an amount not to exceed the sum of \$2,500 for each day in which the violation occurs and \$2,500 for each acre-foot of water diverted or used in violation of the cease and desist order.

The bill would impose civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for a failure to comply with various reporting or monitoring requirements, including requirements imposed pursuant to the public trust doctrine. The bill would authorize the board to impose additional civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for the violation of a permit, license, certificate, or registration, or an order or regulation involving the unreasonable use of water. Funds derived from the imposition of these civil penalties would be deposited in the Water Rights Fund.

The bill would require the board to adjust for inflation, by January 1 of each year, beginning in 2011, the amounts of civil and administrative liabilities or penalties imposed by the board in water right actions, as specified.

The bill would specify that, in a proceeding before the board in which it is alleged that an appropriative water right has ceased, or is subject to prescribed action, it shall be deemed that a diversion or use occurring on or after January 1, 2009, and required to be reported, as specified, did not occur unless that diversion or use was reported to the board.

(8) Existing law authorizes a local agency whose service area includes a groundwater basin that is not subject to groundwater management to adopt and implement a groundwater management plan pursuant to certain provisions of law. Existing law requires a groundwater management plan to include certain components to qualify as a plan for the purposes of those provisions, including a provision that establishes funding requirements for the construction of certain groundwater projects.

This bill would establish a groundwater monitoring program pursuant to which specified entities, in accordance with prescribed procedures, may propose to be designated by the Department of Water Resources as groundwater monitoring entities, as defined, for the purposes of monitoring and reporting with regard to groundwater elevations in all or part of a basin or subbasin, as defined. The bill would require the department to work cooperatively with each monitoring entity to determine the manner in which groundwater elevation information

should be reported to the department. The bill would authorize the department to make recommendations for improving an existing monitoring program, require additional monitoring wells under certain circumstances, and require the department, under prescribed circumstances, to perform groundwater monitoring functions for those portions of a basin or a subbasin for which no monitoring entity has agreed to perform those functions under this program.

(9) Existing law requires the department to conduct an investigation of the state’s groundwater basins and to report its findings to the Governor and the Legislature not later than January 1, 1980.

This bill would repeal that provision. The department would be required to conduct an investigation of the state’s groundwater basins and to report its findings to the Governor and the Legislature not later than January 1, 2012, and every 5 years thereafter.

(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(11) These provisions would only become operative if ____ of the 2009–10 Regular Session of the Legislature are enacted and become effective on or before January 1, 2010.

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

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

1 SECTION 1. Section 6103.1 of the Government Code is
2 amended to read:

3 6103.1. Section 6103 does not apply to any fee or charge for
4 official services required by ~~Parts~~ *Part 1 (commencing with Section*
5 *1000), Part 2 (commencing with Section 1200), Part 3*
6 *(commencing with Section 2000), and Part 4 (commencing with*
7 *Section 4000), Part 5 (commencing with Section 4999), or Part*
8 *5.1 (commencing with Section 5100) of Division 2, or Division 7*
9 *(commencing with Section 13000), of the Water Code.*

10 SEC. 2. Section 6103.4 of the Government Code is amended
11 to read:

12 6103.4. Section 6103 does not apply to any fee or charge for
13 official services required by Section 100860 of the Health and

1 Safety Code, or Part 5 (commencing with Section 4999) of Division
2 2, or Division 7 (commencing with Section 13000), of the Water
3 Code.

4 SEC. 3. Section 1051.1 is added to the Water Code, to read:

5 1051.1. (a) In conducting any investigation or proceeding
6 specified in Sections 275 or 1051, or Article 7 (commencing with
7 Section 13550) of Chapter 7 of Division 7, the board may order
8 any person or entity that diverts or uses water to prepare, under
9 penalty of perjury, and to submit to the board, any technical or
10 monitoring program reports related to that person's or entity's
11 diversion or use of water as the board may specify. The costs
12 incurred by the person or entity in the preparation of those reports
13 shall bear a reasonable relationship to the need for the report and
14 the benefit to be obtained from the report. If the preparation of
15 individual reports would result in a duplication of effort, or if the
16 reports are necessary to evaluate the cumulative effect of several
17 diversions or uses of water, the board may order any person or
18 entity subject to this subdivision to pay a reasonable share of the
19 cost of preparing reports.

20 (b) Any order issued under this section shall be served by
21 personal service or registered mail on the party required to submit
22 technical or monitoring program reports or to pay a share of the
23 costs of preparing reports. Unless the board issues the order after
24 a hearing, the order shall inform the party of the right to request a
25 hearing within 30 days after the party has been served. If the party
26 does not request a hearing within that 30-day period, the order
27 shall take effect as issued. If the party requests a hearing within
28 that 30-day period, the board may adopt a decision and order after
29 conducting a hearing.

30 (c) Upon application of any person or entity or upon its own
31 motion, the board may review and revise any order issued pursuant
32 to this section, in accordance with the procedures set forth in
33 subdivision (b).

34 (d) In conducting any investigation or proceeding specified in
35 Sections 275 or 1051, or Article 7 (commencing with Section
36 13550) of Chapter 7 of Division 7, the board may inspect the
37 facilities of any person or entity to ascertain whether the purposes
38 of Section 100 and this division are being met and to ascertain
39 compliance with any permit, license, certification, registration,
40 decision, order or regulation issued under Section 275, this division,

1 or Article 7 (commencing with Section 13550) of Chapter 7 of
 2 Division 7. Except in the event of an emergency affecting the
 3 public health or safety, the inspection shall be made with the
 4 consent of the owner or possessor of the facilities or, if the consent
 5 is withheld, with a warrant duly issued pursuant to the procedure
 6 set forth in Title 13 (commencing with Section 1822.50) of Part
 7 3 of the Code of Civil Procedure.

8 SEC. 4. Section 1052 of the Water Code is amended to read:

9 1052. (a) The diversion or use of water subject to this division
 10 other than as authorized in this division is a trespass.

11 ~~(b) Civil liability may be administratively imposed by the board~~
 12 ~~pursuant to Section 1055 for a trespass as defined in this section~~
 13 ~~in an amount not to exceed five hundred dollars (\$500) for each~~
 14 ~~day in which the trespass occurs.~~

15 ~~(e)~~

16 (b) The Attorney General, upon request of the board, shall
 17 institute in the superior court in and for any county ~~wherein~~ *in*
 18 *which* the diversion or use is threatened, is occurring, or has
 19 occurred ~~appropriate~~ *an* action for the issuance of injunctive relief
 20 as may be warranted by way of temporary restraining order,
 21 preliminary injunction, or permanent injunction.

22 ~~(d)~~

23 (c) (1) Any person or entity committing a trespass as defined
 24 in this section may be liable ~~for a sum in an amount~~ *in an amount* not to exceed
 25 ~~five hundred dollars (\$500) for each day in which the trespass~~
 26 ~~occurs. The~~ *the sum of the following:*

27 (A) *One thousand dollars (\$1,000) for each day in which the*
 28 *trespass occurs.*

29 (B) *One thousand dollars (\$1,000) for each acre-foot of water*
 30 *diverted or used other than as authorized in this division.*

31 (2) *Civil liability may be imposed by the superior court.*

32 *The* Attorney General, upon request of the board, shall petition
 33 the superior court to impose, assess, and recover any sums pursuant
 34 to this subdivision. In determining the appropriate amount, the
 35 court shall take into consideration all relevant circumstances,
 36 including, but not limited to, the extent of harm caused by the
 37 violation, the nature and persistence of the violation, the length of
 38 time over which the violation occurs, and the corrective action, if
 39 any, taken by the violator.

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

3 (e)

4 (d) All funds recovered pursuant to this section shall be
5 deposited in the Water Rights Fund established pursuant to Section
6 1550.

7 (f)

8 (e) The remedies prescribed in this section are cumulative and
9 not alternative.

10 SEC. 5. Section 1055 of the Water Code is amended to read:

11 1055. (a) The executive director of the board may issue a
12 complaint to any person or entity on which administrative civil
13 liability may be imposed pursuant to Section 1052, ~~Section 1536,~~
14 ~~Section 1845, or 1118, Article 4 (commencing with Section 1845)~~
15 ~~of Chapter 12 of Part 2 of Division 2, or Section 5107.~~ The
16 complaint shall allege the act or failure to act that constitutes a
17 trespass or violation, the provision of law authorizing civil liability
18 to be imposed, and the proposed civil liability.

19 (b) The complaint shall be served by personal notice or certified
20 mail, and shall inform the party served that the party may request
21 a hearing not later than 20 days from the date the party was served.
22 The hearing shall be before *the board, or* a member of the board
23 ~~as it may specify in accordance with Section 183.~~

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

34 (c) *The board may adopt an order setting administrative civil*
35 *liability, or determining that no liability will be imposed, after any*
36 *necessary hearing.*

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

40 SEC. 6. Section 1055.2 of the Water Code is amended to read:

1 1055.2. No person or entity shall be subject to both civil
2 liability imposed under Section 1055 and civil liability imposed
3 by the superior court under ~~subdivision (d)~~ of Section 1052, Section
4 ~~1536 1118~~, or Section 1845, or *Section 1846* for the same act or
5 failure to act.

6 SEC. 7. Section 1055.5 is added to the Water Code, to read:

7 1055.5. (a) (1) The board shall adjust on an annual basis, by
8 January 1 of each year beginning in 2011, all civil and
9 administrative liabilities or penalties imposed by the board in an
10 action brought at the request of the board pursuant this division,
11 to adjust the maximum amounts specified in this division for
12 inflation, as established by the amount by which the California
13 Consumer Price Index for the month of June of the year prior to
14 the adjustment exceeds the California Consumer Price Index for
15 June of the calendar year in which legislation was last enacted
16 establishing or amending the maximum amount of the liability or
17 penalty.

18 (2) The amount of any liability or penalty determined pursuant
19 to this subdivision shall be rounded as follows:

20 (A) To the nearest multiple of ten dollars (\$10) in the case of a
21 liability or penalty that is less than or equal to one hundred dollars
22 (\$100).

23 (B) To the nearest multiple of one hundred dollars (\$100) in the
24 case of a liability or penalty that is greater than one hundred dollars
25 (\$100), but less than or equal to one thousand dollars (\$1,000).

26 (C) To the nearest multiple of one thousand dollars (\$1,000) in
27 the case of a liability or penalty that is greater than one thousand
28 dollars (\$1,000) but less than or equal to ten thousand dollars
29 (\$10,000).

30 (D) To the nearest multiple of five thousand dollars (\$5,000) in
31 the case of a liability or penalty that is greater than ten thousand
32 dollars (\$10,000).

33 (3) Inflation adjustments made pursuant to this subdivision are
34 exempt from the requirements of Chapter 3.5 (commencing with
35 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
36 Code. The updated civil and administrative liability or penalties
37 pursuant to the inflation adjustment shall be filed with the Secretary
38 of State and published in the California Code of Regulations.

39 (b) This section does not apply to any liability imposed under
40 Section 1538.

1 (c) The board shall report to the Legislature with regard to the
2 implementation of this section.

3 SEC. 8. Chapter 3.5 (commencing with Section 1110) is added
4 to Part 1 of Division 2 of the Water Code, to read:

5

6

CHAPTER 3.5. INTERIM RELIEF

7

8 1110. (a) The board may issue an interim relief order in
9 appropriate circumstances, after notice and an opportunity for a
10 hearing, in proceedings to enforce all of the following:

11 (1) Section 2 of Article X of the California Constitution.

12 (2) The public trust doctrine.

13 (3) Water quality objectives adopted pursuant to subdivision
14 (b) of Section 13142, Section 13170, or Section 13241.

15 (4) The requirements set forth in permits and licenses issued
16 pursuant to Part 2 (commencing with Section 1200), including
17 actions that invoke the board's reserved jurisdiction.

18 (5) Division 1 (commencing with Section 100), this division,
19 or Article 7 (commencing with Section 13550) of Chapter 7 of
20 Division 7.

21 (6) Section 5937 of the Fish and Game Code.

22 (b) The board may commence an interim relief proceeding on
23 its own motion or upon the petition of any interested party. The
24 board shall not accept any petition that does not include all of the
25 following information:

26 (1) The name and address of the petitioner.

27 (2) A description of the specific diversion or use of water that
28 the petitioner is contesting.

29 (3) A statement of the petitioner's interest in the contested
30 diversion or use of water.

31 (4) Identification of the proceedings in which interim relief is
32 requested.

33 (5) A description of the harm or injury complained of.

34 (6) An explanation of the nexus between the diversion or use
35 and the alleged harm or injury.

36 (7) A statement of reasons that would justify the relief that the
37 petitioner has requested.

38 (8) Any additional information that the board may deem
39 appropriate.

1 (c) The board may dismiss a petition that does not raise
2 substantial issues that are appropriate for review.

3 (d) Unless the board concludes that consideration of the matter
4 is urgent, the board shall provide notice at least 20 days before the
5 hearing date. In its discretion, the board may provide that the
6 evidence to be considered shall be based on declarations under
7 penalty of perjury, the testimony of witnesses at the hearing, or
8 both. The board shall also consider oral or written legal argument
9 that is provided in a timely manner by the parties. The board may
10 establish a schedule for filing declarations and written arguments.

11 (e) If the board issues an interim relief order without providing
12 at least 20 days' notice before the hearing date, or if the board
13 issues an interim relief order after considering the declaration of
14 any witness who is not available for cross examination, the interim
15 relief order shall remain in effect for a period not to exceed 180
16 days unless the party to whom the interim relief order is issued
17 agrees to an extension of that period. This subdivision is not a
18 limitation on the authority of the board to issue any additional
19 interim relief in response to changed circumstances.

20 (f) In determining whether to provide interim relief, and the
21 nature and extent of the relief, the board shall consider all relevant
22 circumstances, including the effects on other legal users of water,
23 fish, wildlife, and other instream beneficial uses, the extent of
24 harm, the necessity for relief, and any appropriate measure to
25 minimize any adverse effects of providing interim relief. Sufficient
26 grounds shall exist for interim relief upon the same showing as
27 would be required for a superior court to grant a preliminary
28 injunction.

29 1111. (a) As part of the interim relief order, the board may
30 require the water diverter or user to do any of the following:

31 (1) Cease all harmful practices.

32 (2) Employ specific procedures and operations to prevent or
33 mitigate the harm.

34 (3) Complete technical and monitoring work and prepare and
35 submit reports on that work, including draft environmental
36 documentation.

37 (4) Participate in and provide funding for studies that the board
38 determines are reasonably necessary to evaluate the impact of the
39 diversion or use that is the subject of the proceeding.

1 (5) Reimburse the board’s expenses for the preparation of any
2 necessary environmental documentation.

3 (6) Take other required action.

4 (b) The board shall set a schedule for compliance with any
5 interim relief order. If a schedule is not being met, the board may
6 hold a hearing, in accordance with Section 1110, to consider
7 changes or other actions which are appropriate under the
8 circumstances, including, but not limited to, further interim relief
9 or changes in the schedule.

10 1112. If the board orders interim relief, the board shall set a
11 schedule, as soon as reasonably possible, for the board’s
12 consideration of permanent relief. The schedule shall include
13 actions which the water diverter or user is required to undertake
14 to ensure timely consideration of the permanent relief. The actions
15 required of the water diverter or user may include, but are not
16 limited to, the completion of technical and monitoring work, the
17 preparation and submittal of reports on that work, including draft
18 environmental documentation, and the reimbursement of the
19 board’s expenses. If the schedule is not being met, the board may
20 hold a hearing in accordance with Section 1110 to consider changes
21 or other actions as may be appropriate under the circumstances.
22 Any permanent relief shall be granted after notice and an
23 opportunity for a hearing.

24 1113. (a) Except as otherwise specified in this section, any
25 interim relief order issued by the board is exempt from the
26 requirements of Division 13 (commencing with Section 21000) if
27 the Public Resources Code if the board makes either of the
28 following findings:

29 (1) Providing interim relief will not have a significant adverse
30 effect on the environment.

31 (2) Providing interim relief will result in environmental benefits,
32 or avoid adverse impacts on the environment which may result
33 from providing interim relief. If the board makes a finding pursuant
34 to this paragraph, the board shall also adopt the finding or findings
35 specified in Section 21081 of the Public Resources Code.

36 (b) Any findings of the board pursuant to this section shall be
37 supported by substantial evidence in the record. If the board makes
38 the findings specified in paragraph (1) of subdivision (a) of Section
39 21081 of the Public Resources Code, or if the board finds that
40 providing interim relief will not have a significant adverse effect

1 on the environment because any potentially significant adverse
2 effect will be avoided as a result of mitigation incorporated in the
3 board's order, the board shall adopt a reporting and monitoring
4 program in accordance with Section 21081.6 of the Public
5 Resources Code.

6 (c) Sections 21167, 21167.1, 21167.4, 21167.5, 21167.6,
7 21167.7, 21167.8, 21168, 21168.5, 21168.9, and 21177 of the
8 Public Resources Code shall apply to any action or proceeding to
9 attack, review, set aside, void, or annul any action or decision of
10 the board pursuant to this chapter on grounds of noncompliance
11 with this section.

12 1114. The board may review and revise any part of an interim
13 relief order at any time after notice to all interested parties and an
14 opportunity for hearing.

15 1115. The adoption of an interim relief order by the board shall
16 not be deemed to alter the burdens of proof or the burdens of
17 coming forward in a subsequent proceeding for permanent relief
18 before the board on the same factual and legal issues.

19 1116. This chapter is not a limitation on the jurisdiction of any
20 court or agency over any matter within that court or agency's
21 jurisdiction.

22 1117. If any water diverter or user fails to comply with any
23 part of an interim relief order, the Attorney General, upon the
24 request of the board, shall petition the superior court for the
25 issuance of a prohibitory or mandatory injunctive relief, as
26 necessary, through the issuance of a temporary restraining order,
27 preliminary injunction, or permanent injunction.

28 1118. (a) Any person or entity who violates any interim relief
29 order issued by the board is liable for a civil penalty of not more
30 than five thousand dollars (\$5,000) for each day in which a
31 violation occurs.

32 (1) Civil liability may be imposed by the superior court. The
33 Attorney General, upon request of the board, shall petition the
34 superior court to impose the liability.

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

37 (b) In determining the appropriate amount, the court or the
38 board, as the case may be, shall consider all the relevant
39 circumstances, including the extent of harm caused by the violation,
40 the nature and persistence of the violation, the length of time over

1 which the violation occurs, and any corrective action undertaken
2 by the violator.

3 (c) Funds derived from civil penalties assessed pursuant to this
4 section shall be deposited in the Water Rights Fund.

5 SEC. 9. Section 1126 of the Water Code is amended to read:

6 1126. (a) It is the intent of the Legislature that all issues
7 relating to state water law decided by the board be reviewed in
8 state courts, if a party seeks judicial review. It is further the intent
9 of the Legislature that the courts assert jurisdiction and exercise
10 discretion to fashion appropriate remedies pursuant to Section 389
11 of the Code of Civil Procedure to facilitate the resolution of state
12 water rights issues in state courts.

13 (b) Any party aggrieved by any decision or order may, not later
14 than 30 days from the date of final action by the board, file a
15 petition for a writ of mandate for review of the decision or order.
16 Except in cases where the decision or order is issued under
17 authority delegated to an officer or employee of the board,
18 reconsideration before the board is not an administrative remedy
19 that is required to be exhausted before filing a petition for writ of
20 mandate. The time for filing the petition for writ of mandate and
21 the time for filing an action or proceeding in which the board is a
22 respondent under Section 21167 of the Public Resources Code
23 shall be extended for any person who seeks reconsideration by the
24 board pursuant to this article. The amendment of this subdivision
25 made during the 2001 portion of the 2001–02 Regular Session
26 does not constitute a change in, but is declaratory of, existing law.

27 (c) Section 1094.5 of the Code of Civil Procedure shall govern
28 judicial proceedings under this section. For the purposes of
29 subdivision (c) of Section 1094.5 of the Code of Civil Procedure,
30 the court shall exercise its independent-judgment *judgment* on
31 the evidence in any case involving the judicial review of a cease
32 and desist order issued pursuant to Article 2 (commencing with
33 Section 1831) of Chapter 12 of Part 2 of Division 2, and in any
34 other case in which the court is authorized by law to exercise its
35 independent-judgment *judgment* on the evidence. *The scope of*
36 *review of any decision or order issued under Chapter 3.5*
37 *(commencing with Section 1110) shall be the same as for a court*
38 *of appeal review of a superior court decision.*

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

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

13 SEC. 10. Section 1240.5 is added to the Water Code, to read:

14 1240.5. In any proceeding before the board in which it is
15 alleged that a right to appropriate water has ceased or is subject to
16 forfeiture or revocation for nonuse, it shall be deemed that any
17 diversion or use required to be reported pursuant to any reporting
18 or monitoring requirement established under any permit, license,
19 certificate, registration, decision or order, or regulation issued by
20 the board pursuant to this division, Section 275, Article 7
21 (commencing with Section 13550) of Division 7, or the public
22 trust doctrine did not occur unless that diversion or use was
23 reported to the board. This section does not apply to any diversion
24 or use that occurred before January 1, 2009.

25 SEC. 11. Section 1525 of the Water Code is amended to read:

26 1525. (a) Each person or entity who holds a permit or license
27 to appropriate water, and each lessor of water leased under Chapter
28 1.5 (commencing with Section 1020) of Part 1, shall pay an annual
29 fee according to a fee schedule established by the board.

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

32 (1) An application for a permit to appropriate water.

33 (2) A registration of appropriation for a small domestic use or
34 livestock stockpond *use*.

35 (3) A petition for an extension of time within which to begin
36 construction, to complete construction, or to apply the water to
37 full beneficial use under a permit.

38 (4) A petition to change the point of diversion, place of use, or
39 purpose of use, under a *registration for small domestic use or*
40 *livestock stockpond use, or under a permit or license.*

- 1 (5) A petition to change the conditions of a permit or license,
2 requested by the permittee or licensee, that is not otherwise subject
3 to paragraph (3) or (4).
- 4 (6) *A petition under Section 1707 or 1740 to change the point*
5 *of diversion, place of use, or purpose of use of a water right that*
6 *is not subject to a permit or license to appropriate water.*
7 ~~(6)~~
- 8 (7) A petition to change the point of discharge, place of use, or
9 purpose of use, of treated wastewater, requested pursuant to Section
10 1211.
- 11 ~~(7)~~
- 12 (8) An application for approval of a water lease agreement.
- 13 ~~(8)~~
- 14 (9) A request for release from priority pursuant to Section 10504.
- 15 ~~(9)~~
- 16 (10) An application for an assignment of a state-filed application
17 pursuant to Section 10504.
- 18 (11) *A statement of water diversion and use pursuant to Part*
19 *5.1 (commencing with Section 5100).*
- 20 (c) The board shall set the fee schedule authorized by this section
21 so that the total amount of fees collected pursuant to this section
22 equals that amount necessary to recover costs incurred in
23 connection with the issuance, administration, review, monitoring,
24 and enforcement of permits, licenses, certificates, and registrations
25 to appropriate water, water leases, *statements of diversion and use*,
26 and orders approving changes in point of discharge, place of use,
27 or purpose of use of treated wastewater. The board may include,
28 as recoverable costs, but is not limited to including, the costs
29 incurred in reviewing applications, registrations, *statements of*
30 *diversion and use*, petitions and requests, prescribing terms of
31 permits, licenses, registrations, and change orders, enforcing and
32 evaluating compliance with permits, licenses, certificates,
33 registrations, change orders, and water leases, inspection,
34 monitoring, planning, modeling, reviewing documents prepared
35 for the purpose of regulating the diversion and use of water,
36 applying and enforcing *the public trust doctrine, Section 275*, the
37 prohibition set forth in Section 1052 against the unauthorized
38 diversion or use of water subject to this division, *the requirements*
39 *under Part 5.1 (commencing with Section 5100) for filing*

1 *statements of diversion and use*, and the administrative costs
2 incurred in connection with carrying out these actions.

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

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

12 (3) The board shall set the amount of total revenue collected
13 each year through the fees authorized by this section at an amount
14 equal to the revenue levels set forth in the annual Budget Act for
15 this activity. The board shall review and revise the fees each fiscal
16 year as necessary to conform with the revenue levels set forth in
17 the annual Budget Act. If the board determines that the revenue
18 collected during the preceding year was greater than, or less than,
19 the revenue levels set forth in the annual Budget Act, the board
20 may further adjust the annual fees to compensate for the over or
21 under collection of revenue.

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

24 SEC. 12. Section 1535 of the Water Code is amended to read:

25 1535. (a) Any fee subject to this chapter that is required in
26 connection with the filing of an application, registration, request,
27 *statement*, or proof of claim, other than an annual fee required after
28 the period covered by the initial filing fee, shall be paid to the
29 board.

30 (b) If a fee established under subdivision (b) of Section 1525,
31 Section 1528, or Section 13160.1 is not paid when due, the board
32 may cancel the application, registration, petition, request, *statement*,
33 or claim, or may refer the matter to the State Board of Equalization
34 for collection of the unpaid fee.

35 SEC. 13. Section 1538 of the Water Code is amended to read:

36 1538. (a) In any proceeding pursuant to Section 1052 in which
37 it is determined that there has been a violation of the prohibition
38 against the unauthorized diversion or use of water subject to this
39 division, the board or court, as the case may be, may impose an
40 additional liability in the amount of *150 percent of any annual fees*

1 that would have been required under this division if the diversion
2 or use had been authorized by a permit or license to appropriate
3 water.

4 (b) *In any proceeding pursuant to Section 5107 in which the*
5 *board imposes liability for a failure to file a statement of diversion*
6 *and use or for a material misstatement in a statement of diversion*
7 *and use, the board may impose an additional liability in the amount*
8 *of 150 percent of any fees that have not been paid but would have*
9 *been required under this division if the statement of diversion and*
10 *use had been filed and did not make any material misstatement.*

11 (c) *The additional liability imposed under this section may*
12 *include interest, at the rate provided under Section 685.010 of the*
13 *Code of Civil Procedure, from the dates the annual fees would*
14 *have been assessed.*

15 SEC. 14. Section 1551 of the Water Code is amended to read:
16 1551. All of the following shall be deposited in the Water
17 Rights Fund:

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

21 (b) All funds collected under Section 1052, ~~1845~~ *Section 1118,*
22 *Article 4 (commencing with Section 1845) of Chapter 12, or Section*
23 *5107.*

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

27 SEC. 15. Section 1825 of the Water Code is amended to read:

28 1825. It is the intent of the Legislature that the state should
29 take vigorous action to enforce the terms and conditions of permits,
30 licenses, certifications, and registrations to appropriate water, to
31 enforce state board orders and decisions, ~~and~~ *to prevent the*
32 *unlawful diversion of water, and to prevent the waste,*
33 *unreasonable use, unreasonable method of use, or unreasonable*
34 *method of diversion of water, and to enforce reporting and*
35 *monitoring requirements.*

36 SEC. 16. Section 1831 of the Water Code is amended to read:

37 1831. (a) ~~When~~ *If* the board determines that any person is
38 violating, or threatening to violate, any requirement described in
39 subdivision (d), the board may issue an order to that person to
40 cease and desist from that violation.

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

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

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

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

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

11 (3) Any decision or order of the board issued under this part,
12 Section 275, or Article 7 (commencing with Section 13550) of
13 Chapter 7 of Division 7, in which decision or order the person to
14 whom the cease and desist order will be issued, or a predecessor
15 in interest to that person, was named as a party directly affected
16 by the decision or order.

17 (4) *Any regulation adopted under Section 275 provided that the*
18 *board shall not issue a cease and desist order for violation of a*
19 *regulation adopted by the department, other than a regulation*
20 *jointly adopted by the department and board, unless enforcement*
21 *is requested by the department.*

22 (5) *Any reporting or monitoring requirement established under*
23 *any decision, order, or regulation issued by the board pursuant*
24 *to this division, Section 275, Article 7 (commencing with Section*
25 *13550) of Division 7, or the public trust doctrine.*

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

29 SEC. 17. Section 1845 of the Water Code is amended to read:

30 1845. (a) Upon the failure of any person to comply with a
31 cease and desist order issued by the board pursuant to this chapter,
32 the Attorney General, upon the request of the board, shall petition
33 the superior court for the issuance of prohibitory or mandatory
34 injunctive relief as appropriate, including a temporary restraining
35 order, preliminary injunction, or permanent injunction.

36 (b) (1) Any person or entity who violates a cease and desist
37 order issued pursuant to this chapter may be liable ~~for a sum in an~~
38 ~~amount not to exceed one thousand dollars (\$1,000) for each day~~
39 ~~in which the violation occurs.~~ *the sum of the following:*

1 (A) *Two thousand five hundred dollars (\$2,500) for each day*
2 *in which the violation occurs.*

3 (B) *Two thousand five hundred dollars (\$2,500) for each*
4 *acre-foot of water diverted or used in violation of the cease and*
5 *desist order.*

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

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

11 (c) In determining the appropriate amount, the court, or the
12 board, as the case may be, shall take into consideration all relevant
13 circumstances, including, but not limited to, the extent of harm
14 caused by the violation, the nature and persistence of the violation,
15 the length of time over which the violation occurs, and the
16 corrective action, if any, taken by the violator.

17 (d) All funds recovered pursuant to this section shall be
18 deposited in the Water Rights Fund established pursuant to Section
19 1550.

20 SEC. 18. Section 1846 is added to the Water Code, to read:

21 1846. (a) Any person or entity subject to a monitoring or
22 reporting requirement specified in subdivision (f) who violates
23 that reporting or monitoring requirement, makes a material
24 misstatement in any record or report submitted under that reporting
25 or monitoring requirement, or tampers with or renders inaccurate
26 any monitoring device required under that reporting or monitoring
27 requirement shall be liable for a sum not to exceed five hundred
28 dollars (\$500) for each day in which the violation occurs.

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

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

34 (d) In determining the appropriate amount, the court, or the
35 board, as the case may be, shall take into consideration all relevant
36 circumstances, including, but not limited to, the extent of harm
37 caused by the violation, the nature and persistence of the violation,
38 the length of time over which the violation occurs, and the
39 corrective action, if any, taken by the violator.

1 (e) All funds recovered pursuant to this section shall be
2 deposited in the Water Rights Fund established pursuant to Section
3 1550.

4 (f) (1) This section applies to any reporting or monitoring
5 requirement established under any permit, license, certificate,
6 registration, decision or order, or regulation issued by the board
7 pursuant to this division, Section 275, Article 7 (commencing with
8 Section 13550) of Division 7, or the public trust doctrine.

9 (2) This section also applies to any reporting or monitoring
10 requirement established by the department under Section 275 or
11 286, if the department requests enforcement pursuant to this
12 section.

13 (3) This section does not provide a basis for imposing liability
14 on a watermaster who is subject to reporting or monitoring
15 requirements but does not divert or use the water subject to those
16 requirements.

17 SEC. 19. Section 1847 is added to the Water Code, to read:

18 1847. (a) Any person or entity who violates any term or
19 condition of a permit, license, certificate, or registration issued
20 under this division or any order or regulation adopted by the board
21 under Section 275 may be liable in an amount not to exceed five
22 hundred dollars (\$500) for each day in which the violation occurs.

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

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

28 (d) In determining the appropriate amount, the court, or the
29 board, as the case may be, shall take into consideration all relevant
30 circumstances, including, but not limited to, the extent of harm
31 caused by the violation, the nature and persistence of the violation,
32 the length of time over which the violation occurs, and the
33 corrective action, if any, taken by the violator.

34 (e) No liability shall be recoverable under this section for any
35 violation for which liability is recovered under Section 1052 or
36 1846.

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

39 SEC. 20. Section 2525 of the Water Code is amended to read:

1 2525. Upon petition signed by one or more claimants to water
2 of any stream system, requesting the determination of the rights
3 of the various claimants to the water of that stream system, the
4 board shall, if, upon investigation, it finds the facts and conditions
5 are such that the public interest and necessity will be served by a
6 determination of the water rights involved, enter an order granting
7 the petition and make proper arrangements to proceed with the
8 determination. *The board may initiate a determination of rights*
9 *under its own motion if after a hearing it finds that the public*
10 *interest and necessity will be served by a determination of the*
11 *rights involved.*

12 SEC. 21. Section 2526 of the Water Code is amended to read:

13 2526. As soon as practicable after granting the petition *or*
14 *motion* the board shall prepare and issue a notice setting forth the
15 following:

16 (a) The facts of the entry of the order and of the pendency of
17 the ~~proceedings~~; *proceedings*.

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

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

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

30 SEC. 22. Section 2550 of the Water Code is amended to read:

31 2550. As soon as practicable after granting the petition *or*
32 *motion*, the board shall begin an investigation of the stream system,
33 of the diversion of water, of all beneficial uses being made of the
34 water, and of the water supply available for those uses, and shall
35 gather such other data and information as may be essential to the
36 proper determination of the water rights in the stream system.

37 SEC. 23. Section 2763.5 of the Water Code is amended to read:

38 2763.5. (a) No exception to the order of determination shall
39 be considered, except in the court's discretion for good cause
40 shown, unless the matter of the exception was presented to the

1 board in the form of an objection. Good cause includes, but is not
2 limited to, the existence of newly discovered relevant evidence
3 which, in the exercise of reasonable diligence, could not have been
4 presented to the board during the board’s proceedings.

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

10 SEC. 24. Section 5106 of the Water Code is amended to read:

11 5106. (a) Neither the statements submitted under this part nor
12 the determination of facts by the board pursuant to Section 5105
13 shall establish or constitute evidence of a right to divert or use
14 water.

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

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

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

27 (4) This subdivision does not affect the requirement in Section
28 2527 to provide notice to all persons who own land that appears
29 to be riparian to the stream system.

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

35 (d) (1) *In any proceeding before the board in which it is alleged*
36 *that an appropriative right has ceased or is subject to forfeiture*
37 *for nonuse because water has not been put to beneficial use, there*
38 *shall be a rebuttable presumption that no use required to be*
39 *included in a statement submitted under this part occurred unless*
40 *that use is included in a statement submitted under this part and*

1 *that the statement is submitted within six months after it is required*
2 *to be filed with the board.*

3 *(2) Paragraph (1) does not apply to any use that occurred before*
4 *January 1, 2009.*

5 SEC. 25. Part 2.11 (commencing with Section 10920) is added
6 to Division 6 of the Water Code, to read:

7
8 PART 2.11. GROUNDWATER MONITORING

9
10 CHAPTER 1. GENERAL PROVISIONS

11
12 10920. (a) It is the intent of the Legislature that on or before
13 January 1, 2012, groundwater elevations in all groundwater basins
14 and subbasins be regularly and systematically monitored locally
15 and that the resulting groundwater information be made readily
16 and widely available.

17 (b) It is the intent of the Legislature that, if local groundwater
18 interests are unable or unwilling to perform the monitoring
19 functions described in this part, the department shall assume those
20 monitoring functions and the department shall recover its costs for
21 conducting the necessary monitoring from the local groundwater
22 users.

23 (c) It is further the intent of the Legislature that the department
24 continue to maintain its current network of monitoring wells,
25 including groundwater elevation and groundwater quality
26 monitoring wells, and that the department continue to coordinate
27 monitoring with local entities.

28 10921. This part does not require the monitoring of
29 groundwater elevations in an area that is not within a basin or
30 subbasin.

31 10922. This part does not expand or otherwise affect the powers
32 or duties of the department relating to groundwater beyond those
33 expressly granted by this part.

34
35 CHAPTER 2. DEFINITIONS

36
37 10925. Unless the context otherwise requires, the definitions
38 set forth in this section govern the construction of this part.

1 (a) “Basin” or “subbasin” means a groundwater basin or
2 subbasin identified and defined in the department’s Bulletin No.
3 118.

4 (b) “Bulletin No. 118” means the department’s report entitled
5 “California’s Groundwater: Bulletin 118” updated in 2003, or as
6 it may be subsequently updated or revised in accordance with
7 Section 12924.

8 (c) “Monitoring entity” means a party conducting or
9 coordinating the monitoring of groundwater elevations pursuant
10 to this part.

11 (d) “Monitoring functions” and “groundwater monitoring
12 functions” means the monitoring of groundwater elevations, the
13 reporting of those elevations to the department, and other related
14 actions required by this part.

15 (e) “Monitoring groundwater elevations” means monitoring
16 groundwater elevations, coordinating the monitoring of
17 groundwater elevations, or both.

18 (f) “Voluntary cooperative groundwater monitoring association”
19 means an association formed for the purposes of monitoring
20 groundwater elevations pursuant to Section 10935.

21

22 CHAPTER 3. GROUNDWATER MONITORING PROGRAM

23

24 10927. Any of the following entities may assume responsibility
25 for monitoring and reporting groundwater elevations in all or a
26 part of a basin or subbasin in accordance with this part:

27 (a) A watermaster or water management engineer appointed by
28 a court or pursuant to statute to administer a final judgment
29 determining rights to groundwater.

30 (b) (1) A groundwater management agency with statutory
31 authority to manage groundwater pursuant to its principle act that
32 is monitoring groundwater elevations in all or a part of a
33 groundwater basin or subbasin on or before January 1, 2010.

34 (2) A water replenishment district established pursuant to
35 Division 18 (commencing with Section 60000). This part does not
36 expand or otherwise affect the authority of a water replenishment
37 district relating to monitoring groundwater elevations.

38 (c) A local agency that is managing all or part of a groundwater
39 basin or subbasin pursuant to Part 2.75 (commencing with Section
40 10750) and that was monitoring groundwater elevations in all or

1 a part of a groundwater basin or subbasin on or before January 1,
2 2010, or a local agency or county that is managing all or part of a
3 groundwater basin or subbasin pursuant to any other legally
4 enforceable groundwater management plan with provisions that
5 are substantively similar to those described in that part and that
6 was monitoring groundwater elevations in all or a part of a
7 groundwater basin or subbasin on or before January 1, 2010.

8 (d) A local agency that is managing all or part of a groundwater
9 basin or subbasin pursuant to an integrated regional water
10 management plan prepared pursuant to Part 2.2 (commencing with
11 Section 10530) that includes a groundwater management
12 component that complies with the requirements of Section 10753.7.

13 (e) A county that is not managing all or a part of a groundwater
14 basin or subbasin pursuant to a legally enforceable groundwater
15 management plan with provisions that are substantively similar to
16 those described in Part 2.75 (commencing with Section 10750).

17 (f) A voluntary cooperative groundwater monitoring association
18 formed pursuant to Section 10935.

19 (g) The department pursuant to Section 10934.

20 10928. (a) Any entity described in subdivision (a) or (b) of
21 Section 10927 that seeks to assume groundwater monitoring
22 functions in accordance with this part shall notify the department,
23 in writing, on or before January 1, 2011. The notification shall
24 include all of the following information:

25 (1) The entity's name, address, telephone number, and any other
26 relevant contact information.

27 (2) The specific authority described in Section 10927 pursuant
28 to which the entity qualifies to assume the groundwater monitoring
29 functions.

30 (3) A map showing the area for which the entity is requesting
31 to perform the groundwater monitoring functions.

32 (4) A statement that the entity will comply with all of the
33 requirements of this part.

34 (b) Any entity described in subdivision (c), (d), (e), or (f) of
35 Section 10927 that seeks to assume groundwater monitoring
36 functions in accordance with this part shall notify the department,
37 in writing, by January 1, 2011. The information provided in the
38 notification shall include all of the following:

39 (1) The entity's name, address, telephone number, and any other
40 relevant contact information.

1 (2) The specific authority described in Section 10927 pursuant
2 to which the entity qualifies to assume the groundwater monitoring
3 functions.

4 (3) For entities that seek to qualify pursuant to subdivision (c)
5 or (d) of Section 10927, the notification shall also include a copy
6 of the current groundwater management plan or the groundwater
7 component of the integrated regional water management plan, as
8 appropriate.

9 (4) For entities that seek to qualify pursuant to subdivision (f)
10 of Section 10927, the notification shall include a statement of
11 intention to meet the requirements of Section 10935.

12 (5) A map showing the area for which the entity is proposing
13 to perform the groundwater monitoring functions.

14 (6) A statement that the entity will comply with all of the
15 requirements of this part.

16 (7) A statement describing the ability and qualifications of the
17 entity to conduct the groundwater monitoring functions required
18 by this part.

19 (c) The department may request additional information that it
20 deems necessary for the purposes of determining the area that is
21 proposed to be monitored or the qualifications of the entity to
22 perform the groundwater monitoring functions.

23 10929. (a) (1) The department shall review all notifications
24 received pursuant to Section 10928.

25 (2) Upon the receipt of a notification pursuant to subdivision
26 (a) of Section 10928, the department shall verify that the notifying
27 entity has the appropriate authority under subdivision (a) or (b) of
28 Section 10927.

29 (3) Upon the receipt of a notification pursuant to subdivision
30 (b) of Section 10928, the department shall do both of the following:

31 (A) Verify that each notification is complete.

32 (B) Assess the qualifications of the notifying party.

33 (b) If the department has questions about the completeness or
34 accuracy of a notification, or the qualifications of a party, the
35 department shall contact the party to resolve any deficiencies. If
36 the department is unable to resolve the deficiencies, the department
37 shall notify the party in writing that the notification will not be
38 considered further until the deficiencies are corrected.

39 (c) If the department determines that more than one party seeks
40 to become the monitoring entity for the same portion of a basin or

1 subbasin, the department shall consult with the interested parties
2 to determine which party will perform the monitoring functions.
3 In determining which party will perform the monitoring functions
4 under this part, the department shall follow the order in which
5 entities are identified in Section 10927.

6 (d) The department shall advise each party on the status of its
7 notification within three months of receiving the notification.

8 10930. Upon completion of each review pursuant to Section
9 10929, the department shall do both of the following if it
10 determines that a party will perform monitoring functions under
11 this part:

12 (a) Notify the party in writing that it is a monitoring entity and
13 the specific portion of the basin or subbasin for which it shall
14 assume groundwater monitoring functions.

15 (b) Post on the department's Internet Web site information that
16 identifies the monitoring entity and the portion of the basin or
17 subbasin for which the monitoring entity will be responsible.

18 10931. (a) The department shall work cooperatively with each
19 monitoring entity to determine the manner in which groundwater
20 elevation information should be reported to the department pursuant
21 to this part. In determining what information should be reported
22 to the department, the department shall defer to existing monitoring
23 programs if those programs result in information that demonstrates
24 seasonal and long-term trends in groundwater elevations. The
25 department shall collaborate with the State Department of Public
26 Health to ensure that the information reported to the department
27 will not result in the inappropriate disclosure of the physical
28 address or geographical location of drinking water sources, storage
29 facilities, pumping operational data, or treatment facilities.

30 (b) (1) For the purposes of this part, the department may
31 recommend improvements to an existing monitoring program,
32 including recommendations for additional monitoring wells.

33 (2) The department may not require additional monitoring wells
34 unless funds are provided for that purpose.

35 10932. Monitoring entities shall commence monitoring and
36 reporting groundwater elevations pursuant to this part on or before
37 January 1, 2012.

38 10933. (a) On or before January 1, 2012, the department shall
39 commence to identify the extent of monitoring of groundwater
40 elevations that is being undertaken within each basin and subbasin.

- 1 (b) The department shall prioritize groundwater basins and
2 subbasins for the purpose of implementing this section. In
3 prioritizing the basins and subbasins, the department shall, to the
4 extent data are available, consider all of the following:
- 5 (1) The population overlying the basin or subbasin.
 - 6 (2) The rate of current and projected growth of the population
7 overlying the basin or subbasin.
 - 8 (3) The number of public supply wells that draw from the basin
9 or subbasin.
 - 10 (4) The total number of wells that draw from the basin or
11 subbasin.
 - 12 (5) The irrigated acreage overlying the basin or subbasin.
 - 13 (6) The degree to which persons overlying the basin or subbasin
14 rely on groundwater as their primary source of water.
 - 15 (7) Any documented impacts on the groundwater within the
16 basin or subbasin, including overdraft, subsidence, saline intrusion,
17 and other water quality degradation.
 - 18 (8) Any other information determined to be relevant by the
19 department.
- 20 (c) If the department determines that all or part of a basin or
21 subbasin is not being monitored pursuant to this part, the
22 department shall do all of the following:
- 23 (1) Attempt to contact all well owners within the area not being
24 monitored.
 - 25 (2) Determine if there is an interest in establishing any of the
26 following:
 - 27 (A) A groundwater management plan pursuant to Part 2.75
28 (commencing with Section 10750).
 - 29 (B) An integrated regional water management plan pursuant to
30 Part 2.2 (commencing with Section 10530) that includes a
31 groundwater management component that complies with the
32 requirements of Section 10753.7.
 - 33 (C) A voluntary groundwater monitoring association pursuant
34 to Section 10935.
 - 35 (d) If the department determines that there is sufficient interest
36 in establishing a plan or association described in paragraph (2) of
37 subdivision (c), or if the county agrees to perform the groundwater
38 monitoring functions in accordance with this part, the department
39 shall work cooperatively with the interested parties to comply with
40 the requirements of this part within two years.

1 (e) If the department determines, with regard to a basin or
2 subbasin, that there is insufficient interest in establishing a plan
3 or association described in paragraph (2) of subdivision (c), and
4 if the county decides not to perform the groundwater monitoring
5 and reporting functions of this part, the department shall do all of
6 the following:

7 (1) Identify any existing monitoring wells that overlie the basin
8 or subbasin that are owned or operated by the department or any
9 other state or federal agency.

10 (2) Determine whether the monitoring wells identified pursuant
11 to paragraph (1) provide sufficient information to demonstrate
12 seasonal and long-term trends in groundwater elevations.

13 (3) If the department determines that the monitoring wells
14 identified pursuant to paragraph (1) provide sufficient information
15 to demonstrate seasonal and long-term trends in groundwater
16 elevations, the department shall not perform groundwater
17 monitoring functions pursuant to Section 10934.

18 (4) If the department determines that the monitoring wells
19 identified pursuant to paragraph (1) provide insufficient
20 information to demonstrate seasonal and long-term trends in
21 groundwater elevations, and the State Mining and Geology Board
22 concurs with that determination, the department shall perform
23 groundwater monitoring functions pursuant to Section 10934.

24 10934. (a) Consistent with Section 10933, the department shall
25 perform the groundwater monitoring functions for those portions
26 of a basin or subbasin for which no monitoring entity has agreed
27 to perform the groundwater monitoring functions.

28 (b) Upon determining that it is required to perform groundwater
29 monitoring functions, the department shall notify both of the
30 following entities that it is forming the groundwater monitoring
31 district:

32 (1) Each well owner within the affected area.

33 (2) Each county that contains all or a part of the affected area.

34 (c) The department shall impose a charge on each well owner
35 for its share of the costs of the department to perform the
36 groundwater monitoring required under this part.

37 (d) The department shall not assess a fee or charge to recover
38 the costs for carrying out its power and duties under this part except
39 as provided in subdivision (c).

1 (e) The department may establish regulations to implement this
2 section.

3 10935. (a) A voluntary cooperative groundwater monitoring
4 association may be formed for the purposes of monitoring
5 groundwater elevations in accordance with this part. The
6 association may be established by contract, a joint powers
7 agreement, a memorandum of agreement, or other form of
8 agreement deemed acceptable by the department.

9 (b) Upon notification to the department by one or more entities
10 that seek to form a voluntary cooperative groundwater monitoring
11 association, the department shall work cooperatively with the
12 interested parties to facilitate the formation of the association.

13 (c) The contract or agreement shall include all of the following:

14 (1) The names of the participants.

15 (2) The boundaries of the area covered by the agreement.

16 (3) The name or names of the parties responsible for meeting
17 the requirements of this part.

18 (4) The method of recovering the costs associated with meeting
19 the requirements of this part.

20 (5) Other provisions that may be required by the department.

21 SEC. 26. Section 12924 of the Water Code is repealed.

22 ~~12924. (a) The department shall, in conjunction with other
23 public agencies, conduct an investigation of the state's groundwater
24 basins. The department shall identify the state's groundwater basins
25 on the basis of geological and hydrological conditions and
26 consideration of political boundary lines whenever practical. The
27 department shall also investigate existing general patterns of
28 groundwater pumping and groundwater recharge within such basins
29 to the extent necessary to identify basins which are subject to
30 critical conditions of overdraft.~~

31 ~~(b) The department shall report its findings to the Governor and
32 the Legislature not later than January 1, 1980.~~

33 SEC. 27. Section 12924 is added to the Water Code, to read:

34 12924. (a) The department, in conjunction with other public
35 agencies, shall conduct an investigation of the state's groundwater
36 basins. The department shall identify the state's groundwater basins
37 on the basis of geological and hydrological conditions and
38 consideration of political boundary lines whenever practical. The
39 department shall also investigate existing general patterns of
40 groundwater pumping and groundwater recharge within such basins

1 to the extent necessary to identify basins that are subject to critical
2 conditions of overdraft.

3 (b) The department shall report its findings to the Governor and
4 the Legislature not later than January 1, 2012, and thereafter in
5 years ending in 5 and 0.

6 SEC. 28. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

15 SEC. 29. This act shall only become operative if ____ of the
16 2009–10 Regular Session of the Legislature are enacted and
17 become effective on or before January 1, 2010.