

OFFICE COPY	
Prepared By	_____
Approved By	_____
Digest Change	Yes <input type="checkbox"/> No <input type="checkbox"/>

AMENDMENTS TO SENATE BILL NO. 229
AS AMENDED IN ASSEMBLY JULY 9, 2009

DRAFT

Amendment 1

Strike out lines 1 to 3, inclusive, of the title, and insert:

An act to amend Sections 6103.1 and 6103.4 of the Government Code, and to amend Sections 1052, 1055, 1055.2, 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.

Amendment 2

On page 2, before line 1, insert:

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

6103.1. Section 6103 does not apply to any fee or charge for official services required by ~~Parts~~ Part 1 (commencing with Section 1000), Part 2 (commencing with Section 1200), Part 3 (commencing with Section 2000), and Part 4 (commencing with Section 4000), Part 5 (commencing with Section 4999), or Part 5.1 (commencing with Section 5100) of Division 2, Division 7 (commencing with Section 13000), or Division 35 (commencing with Section 85000) of the Water Code.

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

6103.4. Section 6103 does not apply to any fee or charge for official services required by Section 100860 of the Health and Safety Code, ~~or Part 5 (commencing with Section 4999) of Division 2, or Division 7 (commencing with Section 13000), of the Water Code.~~

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

1051.1. (a) In conducting any investigation or proceeding specified in Section 275 or 1051, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, the board may order any person or entity that diverts or uses water to prepare, under penalty of perjury, and to submit to the board, any technical or monitoring program reports related to that person's or entity's diversion or use of water as the board may specify. The costs incurred by the person or entity in the preparation of those reports

shall bear a reasonable relationship to the need for the report and the benefit to be obtained from the report. If the preparation of individual reports would result in a duplication of effort, or if the reports are necessary to evaluate the cumulative effect of several diversions or uses of water, the board may order any person or entity subject to this subdivision to pay a reasonable share of the cost of preparing reports.

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

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

(d) In conducting any investigation or proceeding specified in Section 275 or 1051, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, the board may inspect the facilities of any person or entity to ascertain whether the purposes of Section 100 and this division are being met and to ascertain compliance with any permit, license, certification, registration, decision, order or regulation issued under Section 275, this division, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7. Except in the event of an emergency affecting the public health or

safety, the inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure.

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

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)~~

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

~~(d)~~

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

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

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

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

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.

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

(e)

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

(f)

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

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

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, Section 1536, Section 1845, or 1118, 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 ~~as it may specify~~ in accordance with Section 183.

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

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

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

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

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

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

1055.5. (a) (1) The board shall adjust on an annual basis, by January 1 of each year beginning in 2011, all civil and administrative liabilities or penalties imposed by the board in an action brought at the request of the board pursuant this division, to adjust the maximum amounts specified in this division for inflation, as established by

the amount by which the California Consumer Price Index for the month of June of the year prior to the adjustment exceeds the California Consumer Price Index for June of the calendar year in which legislation was last enacted establishing or amending the maximum amount of the liability or penalty.

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

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

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

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

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

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

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

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

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

CHAPTER 3.5. INTERIM RELIEF

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

- (1) Section 2 of Article X of the California Constitution.
- (2) The public trust doctrine.
- (3) Water quality objectives adopted pursuant to subdivision (b) of Section 13142, Section 13170, or Section 13241.
- (4) The requirements set forth in permits, licenses, certificates, and registrations issued pursuant to Part 2 (commencing with Section 1200), including actions that invoke the board's reserved jurisdiction.
- (5) Division 1 (commencing with Section 100), this division, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7.

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

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

- (1) The name and address of the petitioner.
 - (2) A description of the specific diversion or use of water that the petitioner is contesting.
 - (3) A statement of the petitioner's interest in the contested diversion or use of water.
 - (4) Identification of the proceedings in which interim relief is requested.
 - (5) A description of the harm or injury complained of.
 - (6) An explanation of the nexus between the diversion or use and the alleged harm or injury.
 - (7) A statement of reasons that would justify the relief that the petitioner has requested.
 - (8) Any additional information that the board may deem appropriate.
- (c) The board may dismiss a petition that does not raise substantial issues that are appropriate for review.
- (d) Unless the board concludes that consideration of the matter is urgent, the board shall provide notice at least 20 days before the hearing date. In its discretion, the board may provide that the evidence to be considered shall be based on declarations under penalty of perjury, the testimony of witnesses at the hearing, or both. The board shall also consider oral or written legal argument that is provided in a timely manner by the parties. The board may establish a schedule for filing declarations and written arguments.
- (e) If the board issues an interim relief order without providing at least 20 days' notice before the hearing date, or if the board issues an interim relief order after

considering the declaration of any witness who is not available for cross examination, the interim relief order shall remain in effect for a period not to exceed 180 days unless the party to whom the interim relief order is issued agrees to an extension of that period. This subdivision is not a limitation on the authority of the board to issue any additional interim relief in response to changed circumstances.

(f) In determining whether to provide interim relief, and the nature and extent of the relief, the board shall consider all relevant circumstances, including the effects on other legal users of water, fish, wildlife, and other instream beneficial uses, the extent of harm, the necessity for relief, and any appropriate measure to minimize any adverse effects of providing interim relief. Except where relief is limited to requirements for submission of reports, participation in studies, or environmental documentation, the board shall not order interim relief except upon a showing of both reasonable probability of success on the merits and that the hardship from denying interim relief outweighs any harm caused by granting interim relief.

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

- (1) Cease all harmful practices.
- (2) Employ specific procedures and operations to prevent or mitigate the harm.
- (3) Complete technical and monitoring work and prepare and submit reports on that work, including draft environmental documentation.
- (4) Participate in and provide funding for studies that the board determines are reasonably necessary to evaluate the impact of the diversion or use that is the subject of the proceeding.

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

(6) Take other required action.

(b) The board shall set a schedule for compliance with any interim relief order.

If a schedule is not being met, the board may hold a hearing, in accordance with Section 1110, to consider changes or other actions which are appropriate under the circumstances, including, but not limited to, further interim relief or changes in the schedule.

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

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

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

(2) Providing interim relief will result in environmental benefits or prevent harm to environmental resources, and the benefits provided or harm prevented outweighs any adverse risks that may result from providing interim relief. If the board makes a finding pursuant to this paragraph, the board shall also adopt the finding or findings specified in Section 21081 of the Public Resources Code.

(b) Any findings of the board pursuant to this section shall be supported by substantial evidence in the record. If the board makes the findings specified in paragraph (1) of subdivision (a) of Section 21081 of the Public Resources Code, or if the board finds that providing interim relief will not have a significant adverse effect on the environment because any potentially significant adverse effect will be avoided as a result of mitigation incorporated in the board's order, the board shall adopt a reporting and monitoring program in accordance with Section 21081.6 of the Public Resources Code.

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

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

1115. The issuance or denial of an interim relief order by the board shall not be deemed to alter the burdens of proof or the burdens of coming forward, with respect

to the board's final decision on the merits in the proceeding in which interim relief is requested.

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

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

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

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

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

(b) In determining the appropriate amount, the court or the board, as the case may be, shall consider all the relevant circumstances, including 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 any corrective action undertaken by the violator.

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

SEC. 9. Section 1240.5 is added to the Water Code, to read:

1240.5. In any proceeding before the board in which it is alleged that a right to appropriate water has ceased or is subject to forfeiture or revocation for nonuse, there shall be a rebuttable presumption that no use occurred unless that use is included in a statement submitted pursuant to any reporting or monitoring requirement established under any permit, license, certificate, registration, decision or order, or regulation issued by the board pursuant to this division, Section 275, Article 7 (commencing with Section 13550) of Division 7, or the public trust doctrine under this part, and the statement is submitted within six months after it is required to be filed with the board. This section does not apply to any diversion or use that occurred before January 1, 2009.

SEC. 10. Section 1525 of the Water Code is amended to read:

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 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 registration for small domestic use or livestock stockpond use, or under a permit or license.

(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 under Section 1707 or 1740 to change the point of diversion, place of use, or purpose of use of a water right that is not subject to a permit or license to appropriate water.

~~(6)~~

(7) A petition to change the point of discharge, place of use, or purpose of use, of treated wastewater, requested pursuant to Section 1211.

~~(7)~~

(8) An application for approval of a water lease agreement.

~~(8)~~

(9) A request for release from priority pursuant to Section 10504.

~~(9)~~

(10) An application for an assignment of a state-filed application pursuant to Section 10504.

(11) A statement of water diversion and use pursuant to Part 5.1 (commencing with Section 5100).

(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, statements of diversion and use, 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, statements of diversion and use, 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 public trust doctrine, Section 275, the prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division, the requirements under Part 5.1 (commencing with Section 5100) for filing statements of diversion and use, 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 revenue levels set forth

in the annual Budget Act for this activity. The board shall review and revise the fees each fiscal year as necessary to conform with the revenue levels set forth in the annual Budget Act. If the 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 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.

SEC. 11. Section 1535 of the Water Code is amended to read:

1535. (a) Any fee subject to this chapter that is required in connection with the filing of an application, registration, request, statement, 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 application, registration, petition, request, statement, or claim, or may refer the matter to the State Board of Equalization for collection of the unpaid fee.

SEC. 12. Section 1538 of the Water Code is amended to read:

1538. (a) 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 150 percent 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.

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

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

SEC. 13. Section 1551 of the Water Code is amended to read:

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~~ Section 1118, Article 4 (commencing with Section 1845) of Chapter 12, or Section 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.

SEC. 14. Section 1825 of the Water Code is amended to read:

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, and to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, and to enforce reporting and monitoring requirements.

SEC. 15. Section 1831 of the Water Code is amended to read:

1831. (a) ~~When~~If 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.

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

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

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

SEC. 16. Section 1845 of the Water Code is amended to read:

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 in an amount not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.~~ the sum of the following:

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

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

(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.

SEC. 17. Section 1846 is added to the Water Code, to read:

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

(b) 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.

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

(d) 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.

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

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

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

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

SEC. 18. Section 1847 is added to the Water Code, to read:

1847. (a) Any person or entity who violates any term or condition of a permit, license, certificate, or registration issued under this division or any order or regulation

adopted by the board under Section 275 may be liable in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs.

(b) 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.

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

(d) 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.

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

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

SEC. 19. Section 2525 of the Water Code is amended to read:

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. The board may 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 the rights involved.

SEC. 20. Section 2526 of the Water Code is amended to read:

2526. As soon as practicable after granting the petition or motion 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;~~ 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;~~ 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;~~ 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.

SEC. 21. Section 2550 of the Water Code is amended to read:

2550. As soon as practicable after granting the petition or motion, 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.

SEC. 22. Section 2763.5 of the Water Code is amended to read:

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 or motion 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.

SEC. 23. Section 5106 of the Water Code is amended to read:

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.

(d) (1) In any proceeding before the board in which it is alleged that an appropriative right has ceased or is subject to forfeiture for nonuse because water has not been put to beneficial use, there shall be a rebuttable presumption that no use required to be included in a statement submitted under this part occurred unless that use is included in a statement submitted under this part and that the statement is submitted within six months after it is required to be filed with the board.

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

SEC. 24. Part 2.11 (commencing with Section 10920) is added to Division 6 of the Water Code, to read:

PART 2.11. GROUNDWATER MONITORING

CHAPTER 1. GENERAL PROVISIONS

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

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

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

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

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

CHAPTER 2. DEFINITIONS

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

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

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

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

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

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

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

CHAPTER 3. GROUNDWATER MONITORING PROGRAM

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

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

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

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

(c) A local agency that is managing all or part of a groundwater basin or subbasin pursuant to Part 2.75 (commencing with Section 10750) and that was monitoring groundwater elevations in all or a part of a groundwater basin or subbasin on or before January 1, 2010, or a local agency or county that is managing all or part of a groundwater basin or subbasin pursuant to any other legally enforceable groundwater management plan with provisions that are substantively similar to those described in that part and that was monitoring groundwater elevations in all or a part of a groundwater basin or subbasin on or before January 1, 2010.

(d) A local agency that is managing all or part of a groundwater basin or subbasin pursuant to an integrated regional water management plan prepared pursuant to Part

2.2 (commencing with Section 10530) that includes a groundwater management component that complies with the requirements of Section 10753.7.

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

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

(g) The department pursuant to Section 10934.

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

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

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

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

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

(b) Any entity described in subdivision (c), (d), (e), or (f) of Section 10927 that seeks to assume groundwater monitoring functions in accordance with this part shall

notify the department, in writing, by January 1, 2011. The information provided in the notification shall include all of the following:

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

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

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

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

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

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

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

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

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

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

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

(A) Verify that each notification is complete.

(B) Assess the qualifications of the notifying party.

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

(c) If the department determines that more than one party seeks to become the monitoring entity for the same portion of a basin or subbasin, the department shall consult with the interested parties to determine which party will perform the monitoring functions. In determining which party will perform the monitoring functions under this part, the department shall follow the order in which entities are identified in Section 10927.

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

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

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

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

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

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

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

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

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

(b) The department shall prioritize groundwater basins and subbasins for the purpose of implementing this section. In prioritizing the basins and subbasins, the department shall, to the extent data are available, consider all of the following:

- (1) The population overlying the basin or subbasin.
- (2) The rate of current and projected growth of the population overlying the basin or subbasin.
- (3) The number of public supply wells that draw from the basin or subbasin.
- (4) The total number of wells that draw from the basin or subbasin.
- (5) The irrigated acreage overlying the basin or subbasin.
- (6) The degree to which persons overlying the basin or subbasin rely on groundwater as their primary source of water.
- (7) Any documented impacts on the groundwater within the basin or subbasin, including overdraft, subsidence, saline intrusion, and other water quality degradation.
- (8) Any other information determined to be relevant by the department.

(c) If the department determines that all or part of a basin or subbasin is not being monitored pursuant to this part, the department shall do all of the following:

- (1) Attempt to contact all well owners within the area not being monitored.
- (2) Determine if there is an interest in establishing any of the following:

(A) A groundwater management plan pursuant to Part 2.75 (commencing with Section 10750).

(B) An integrated regional water management plan pursuant to Part 2.2 (commencing with Section 10530) that includes a groundwater management component that complies with the requirements of Section 10753.7.

(C) A voluntary groundwater monitoring association pursuant to Section 10935.

(d) If the department determines that there is sufficient interest in establishing a plan or association described in paragraph (2) of subdivision (c), or if the county agrees to perform the groundwater monitoring functions in accordance with this part, the department shall work cooperatively with the interested parties to comply with the requirements of this part within two years.

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

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

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

(3) If the department determines that the monitoring wells identified pursuant to paragraph (1) provide sufficient information to demonstrate seasonal and long-term

trends in groundwater elevations, the department shall not perform groundwater monitoring functions pursuant to Section 10934.

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

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

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

(1) Each well owner within the affected area.

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

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

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

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

10935. (a) A voluntary cooperative groundwater monitoring association may be formed for the purposes of monitoring groundwater elevations in accordance with

this part. The association may be established by contract, a joint powers agreement, a memorandum of agreement, or other form of agreement deemed acceptable by the department.

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

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

- (1) The names of the participants.
- (2) The boundaries of the area covered by the agreement.
- (3) The name or names of the parties responsible for meeting the requirements of this part.
- (4) The method of recovering the costs associated with meeting the requirements of this part.
- (5) Other provisions that may be required by the department.

10936. Costs incurred by the department pursuant to this chapter may be funded from unallocated bond revenues pursuant to paragraph (12) of subdivision (a) of Section 75027 of the Public Resources Code, to the extent those funds are available for those purposes, except as provided in subdivision (c) of Section 10934.

SEC. 25. Section 12924 of the Water Code is repealed.

~~12924. (a) The department shall, in conjunction with other public agencies, conduct an investigation of the state's groundwater basins. The department shall identify the state's groundwater basins on the basis of geological and hydrological conditions and consideration of political boundary lines whenever practical. The department shall~~

~~also investigate existing general patterns of groundwater pumping and groundwater recharge within such basins to the extent necessary to identify basins which are subject to critical conditions of overdraft.~~

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

SEC. 26. Section 12924 is added to the Water Code, to read:

12924. (a) The department, in conjunction with other public agencies, shall conduct an investigation of the state's groundwater basins. The department shall identify the state's groundwater basins on the basis of geological and hydrological conditions and consideration of political boundary lines whenever practical. The department shall also investigate existing general patterns of groundwater pumping and groundwater recharge within those basins to the extent necessary to identify basins that are subject to critical conditions of overdraft.

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

SEC. 27. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 28. This act shall only become operative if Assembly Bill 39, Assembly Bill 49, Senate Bill 12, and Senate Bill 458 of the 2009–10 Regular Session of the Legislature, relating to water use and resource management, are enacted and become effective on or before January 1, 2010.

Amendment 3

On page 2, strike out lines 1 to 20, inclusive, and strike out pages 3 and 4

DRAFT