

AMENDED IN SENATE NOVEMBER 2, 2009

AMENDED IN SENATE OCTOBER 29, 2009

CALIFORNIA LEGISLATURE—2009–10 SEVENTH EXTRAORDINARY SESSION

SENATE BILL

No. 5

Introduced by Senators Steinberg and Pavley

October 28, 2009



SBX7 5 2009

~~An act to amend Sections 6103.1 and 6103.4 of the Government Code, to amend Sections 1052, 1055, 1055.2, 1055.3, 1120, 1525, 1535, 1538, 1550, 1551, 1825, 1845, 2525, 2526, 2550, 2763.5, 5100, 5101, 5103, 5106, and 5107 of, to amend and repeal Section 10631.5 of, to add Sections 1051.1, 1240.5, 1826, 1846, and 1847 to, to add Chapter 2.7 (commencing with Section 348) to Division 1 of, to repeal Section 5108 of, the Water Code, and to amend and supplement the Budget Act of 2009 (Chapter 1 of the 2009–10 Third Extraordinary Session) by amending Items 3940-001-0439 and 3940-001-3058 of Section 2.00 of the Budget Act of 2009, relating to water resources, and making an appropriation therefor.~~ *An act to amend Sections 6103.1 and 6103.4 of the Government Code, to amend Sections 1052, 1055, 1055.2, 1055.3, 1120, 1228.5, 1228.7, 1525, 1535, 1538, 1550, 1551, 1825, 1845, 2525, 2526, 2550, 2763.5, 5100, 5101, 5103, 5106, and 5107 of, to add Sections 1051.1, 1240.5, 1826, 1846, and 1847 to, and to repeal Section 5108 of, the Water Code, and to amend and supplement the Budget Act of 2009 (Chapter 1 of the 2009–10 Third Extraordinary Session) by amending Items 3940-001-0439 and 3940-001-3058 of Section 2.00 of the Budget Act of 2009, relating to water resources, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 5, as amended, Steinberg. Water resources.

(1) Existing law generally prohibits 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, from being 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 for official services relating to statements of water diversion and use.

(2) Existing law authorizes the State Water Resources Control 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 any technical or monitoring report related to the diversion or use of water by that person or entity. 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.

(3) Existing law authorizes the State Water Resources Control 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, based on substantial evidence, that the public interest and necessity will be served by a determination of rights.

(4) 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 or \$5,000 for each day in which the trespass occurs, as specified, or the highest market value of the water, whichever is the greater amount. The moneys would be required to be deposited in the Water Rights Fund, as specified. The bill would establish the Water Rights Protection Subaccount in the Water Rights Fund. Specified penalties would be required to be deposited in the subaccount. The bill would state legislative intent regarding the expenditure of the moneys in the subaccount.

(5) Existing law, with certain exceptions, requires each person who diverts water after December 31, 1965, to file with the State Water Resources Control Board a prescribed statement of diversion and use. Existing law requires a statement to include specified information, including, on and after January 1, 2012, monthly records of water diversions.

This bill would revise the types of water diversions for which the reporting requirement does not apply, including, among other diversions, a diversion that occurs before January 1, 2009, if certain requirements are met. The bill would delete exceptions to the monthly record requirement, and revise requirements relating to the contents of the statement of diversions and use.

The bill would subject a person to civil liability if that person fails to file, as required, a diversion and use statement for a diversion or use that occurs after January 1, 2009, tampers with any measuring device, or makes a material misstatement in connection with the filing of a diversion and use statement. The board would be authorized to impose the civil liability in accordance with a specified schedule. Funds recovered pursuant to these provisions would be required to be deposited in the Water Rights Fund, as specified.

The 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.

(6) Existing law authorizes the State Water Resources Control 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 increase, as specified, the civil penalties that apply to a person who violates a 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, as specified.

The bill would require 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, there would be a rebuttable presumption that no use occurred on or after January 1, 2009, unless that diversion or use was reported to the board within 6 months after it is required to be filed with the board.

(7) The Budget Act of 2009 made appropriations for the support of the State Water Resources Control Board for the 2009–10 fiscal year, with certain payments from the Water Rights Fund.

This bill would amend and supplement the Budget Act of 2009 by making an additional appropriation from the fund to support water

rights enforcement. The bill would, commencing with the 2010–11 fiscal year, continuously appropriate \$3,750,000 on an annual basis only from fee revenue in the fund to the board for the purpose of funding permanent water right enforcement positions.

(8) This bill would take effect only if SB 1, SB 6, and SB 7 of the 2009–10 7th Extraordinary Session is enacted and becomes effective.

~~(1) Existing law generally prohibits 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, from being 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 for official services relating to statements of water diversion.~~

~~(2) Existing law authorizes the State Water Resources Control 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 any technical or monitoring report related to the diversion or use of water by that person or entity. 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.~~

~~(3) Existing law authorizes the State Water Resources Control 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, based on substantial evidence, that the public interest and necessity will be served by a determination of rights:

(4) 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 or \$5,000 for each day in which the trespass occurs, as specified, or the highest market value of the water, whichever is the greater amount. The moneys would be required to be deposited in the Water Rights Fund, as specified. The bill would establish the Water Rights Protection Subaccount in the Water Rights Fund. Specified penalties would be required to be deposited in the subaccount. The bill would state legislative intent regarding the expenditure of the moneys in the subaccount.

(5) Existing law, with certain exceptions, requires each person who diverts water after December 31, 1965, to file with the State Water Resources Control Board a prescribed statement of diversion and use. Existing law requires a statement to include specified information, including, on and after January 1, 2012, monthly records of water diversions. Under existing law, the monthly record requirement does not apply to a surface water diversion with a combined diversion capacity from a natural channel that is less than 50 cubic feet per second or to diverters using siphons in the tidal zone. Existing law subjects a person who makes a material misstatement in connection with the filing of the diversion and use statements to administratively imposed civil penalties in the amount of \$500 for each violation.

This bill would revise the types of water diversions for which the reporting requirement does not apply, including, among other diversions, a diversion that occurs before January 1, 2009, if certain requirements are met. The bill would delete exceptions to the monthly record requirement, and revise requirements relating to the contents of the statement of diversions and use.

The bill would subject a person to civil liability if that person fails to file, as required, a diversion and use statement for a diversion or use that occurs after January 1, 2009, tampers with any measuring device,

~~or makes a material misstatement in connection with the filing of a diversion and use statement. The board would be authorized to impose the civil liability in accordance with a specified schedule. Funds recovered pursuant to these provisions would be required to be deposited in the Water Rights Fund, as specified.~~

~~The bill would authorize the board and the Department of Water Resources to adopt emergency regulations for the electronic filing of reports of water diversion or use that are required to be filed with those respective state agencies under specified statutory provisions.~~

~~The 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.~~

~~(6) Existing law authorizes the State Water Resources Control 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 increase, as specified, the civil penalties that apply to a person who violates a 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, as specified.

The bill would require 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, there would be a rebuttable presumption that no use occurred on or after January 1, 2009, unless that diversion or use was reported to the board within 6 months after it is required to be filed with the board.

(7) The Budget Act of 2009 made appropriations for the support of the State Water Resources Control Board for the 2009–10 fiscal year, with certain payments from the Water Rights Fund.

This bill would amend and supplement the Budget Act of 2009 by making an additional appropriation from the fund to support water rights enforcement. The bill would, commencing with the 2010–11 fiscal year, continuously appropriate \$3,750,000 on an annual basis only from fee revenue in the fund to the board for the purpose of funding permanent water rights enforcement positions.

(8) This bill would take effect only if SB 1, SB 6, and 7 of the 2009–10 7th Extraordinary Session of the Legislative are enacted and become effective.

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

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, Division 7
9 (commencing with Section 13000), or Division 35 (commencing
10 with Section 85000) of the Water Code.

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

13 6103.4. Section 6103 does not apply to any fee or charge for
14 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 Section 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 and
9 submit to the board any technical or monitoring program reports
10 related to that person's or entity's diversion or use of water as the
11 board may specify. The costs incurred by the person or entity in
12 the preparation of those reports shall bear a reasonable
13 relationship to the need for the report and the benefit to be obtained
14 from the report. If the preparation of individual reports would
15 result in a duplication of effort, or if the reports are necessary to
16 evaluate the cumulative effect of several diversions or uses of
17 water, the board may order any person or entity subject to this
18 subdivision to pay a reasonable share of the cost of preparing
19 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
25 a hearing within 30 days after the party has been served. If the
26 party does not request a hearing within that 30-day period, the
27 order shall take effect as issued. If the party requests a hearing
28 within that 30-day period, the board may adopt a decision and
29 order after 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 Section 275 or 1051, or Article 7 (commencing with Section 13550)
36 of Chapter 7 of Division 7, the board may inspect the facilities of
37 any person or entity to ascertain whether the purposes of Section
38 100 and this division are being met and to ascertain compliance
39 with any permit, license, certification, registration, decision, order,
40 or regulation issued under Section 275, this division, or Article 7

1 (commencing with Section 13550) of Chapter 7 of Division 7. The
 2 board shall adopt regulations for procedures pursuant to Article
 3 13 (commencing with Section 11460.10) of Chapter 4.5 of Part 1
 4 of Division 3 of Title 2 of the Government Code, and any time
 5 extensions necessary to implement those regulations. Except in
 6 the event of an emergency affecting the public health or safety, the
 7 inspection shall be made with the consent of the owner or possessor
 8 of the facilities or, if the consent is withheld, with a warrant duly
 9 issued pursuant to the procedure set forth in Title 13 (commencing
 10 with Section 1822.50) of Part 3 of the Code of Civil Procedure.

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

12 1052. (a) The diversion or use of water subject to this division
 13 other than as authorized in this division is a trespass.

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

18 ~~(e)~~

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

25 ~~(d)~~

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

30 (A) *One thousand dollars (\$1,000) for each day in which the*
 31 *trespass occurs for the first enforcement proceeding or five*
 32 *thousand dollars (\$5,000) for each day in which the trespass occurs*
 33 *for any subsequent enforcement proceeding.*

34 (B) *The highest market value of the water subject to the trespass.*

35 (2) The Attorney General, upon request of the board, shall
 36 petition the superior court to impose, assess, and recover any sums
 37 pursuant to this subdivision. In determining the appropriate amount,
 38 the court shall take into consideration all relevant circumstances,
 39 including, but not limited to, the extent of harm caused by the
 40 violation, the nature and persistence of the violation, the length of

1 time over which the violation occurs, and, *with respect to the*
2 *violation, the ability to pay, the effect on the ability to continue in*
3 *business, the corrective action, if any, taken by the violator, and*
4 *other matters as justice may require.*

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

7 (e)

8 (d) (1) All funds recovered pursuant to this section shall be
9 deposited in the Water Rights Fund established pursuant to Section
10 1550.

11 (2) *Any funds recovered pursuant to this section that exceed the*
12 *amounts that were authorized before the effective date of the*
13 *amendments made to this section by Senate Bill 5 of the 2009–10*
14 *Seventh Extraordinary Session of the Legislature shall be deposited*
15 *in the Water Rights Protection Subaccount in the Water Rights*
16 *Fund established pursuant to Section 1550.*

17 (f)

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

20 (f) *The increase in the amount of penalties that may be imposed*
21 *pursuant to the amendments made to this section during the*
22 *2009–10 Seventh Extraordinary Session of the Legislature does*
23 *not apply to violations that occurred prior to the effective date of*
24 *those amendments.*

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

26 1055. (a) The executive director of the board may issue a
27 complaint to any person or entity on which administrative civil
28 liability may be imposed pursuant to Section 1052, ~~Section 1536,~~
29 ~~Section 1845,~~ *Article 4 (commencing with Section 1845) of Chapter*
30 *12 of Part 2 of Division 2, or Section 5107. The complaint shall*
31 *allege the act or failure to act that constitutes a trespass or violation,*
32 *the provision of law authorizing civil liability to be imposed, and*
33 *the proposed civil liability.*

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

39 (e) ~~After any hearing, the member shall report a proposed~~
40 ~~decision and order to the board and shall supply a copy to the party~~

1 served with the complaint, the board's executive director, and any
2 other person requesting a copy. The member of the board acting
3 as hearing officer may sit as a member of the board in deciding
4 the matter. The board, after making an independent review of the
5 record and taking any additional evidence as may be necessary
6 that could not reasonably have been offered before the hearing
7 officer, may adopt, with or without revision, the proposed decision
8 and order.

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

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

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

16 1055.2. No person or entity shall be subject to both civil
17 liability imposed under Section 1055 and civil liability imposed
18 by the superior court under ~~subdivision (d) of Section 1052, Section~~
19 ~~1536, or Section 1845, or 1846~~ for the same act or failure to act.

20 *SEC. 7. Section 1055.3 of the Water Code is amended to read:*

21 1055.3. In determining the amount of civil liability, the board
22 shall take into consideration all relevant circumstances, including,
23 but not limited to, the extent of harm caused by the violation, the
24 nature and persistence of the violation, the length of time over
25 which the violation occurs, and *with respect to the violator, the*
26 *ability to pay, the effect on the ability to continue in business, the*
27 *corrective action, if any, taken by the violator, and other matters*
28 *as justice may require.*

29 *SEC. 8. Section 1120 of the Water Code is amended to read:*

30 1120. This chapter applies to any decision or order issued under
31 this part or Section 275, Part 2 (commencing with Section 1200),
32 Part 2 (commencing with Section 10500) of Division 6, Article 7
33 (commencing with Section 13550) of Chapter 7 of Division 7,
34 *Section 85230*, or the public trust doctrine.

35 *SEC. 9. Section 1228.5 of the Water Code is amended to read:*

36 1228.5. (a) Registration of a small domestic or livestock
37 stockpond use pursuant to this article shall be renewed prior to the
38 expiration of each five-year period following completed
39 registration.

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

4 (c) The conditions established by the board pursuant to Section
5 1228.6 which are in effect at the time of renewal of registration
6 shall supersede the conditions which were applicable to the original
7 completed registration.

8 (d) Failure to renew registration in substantial compliance with
9 the reporting requirements prescribed by the board within the time
10 period specified in subdivision (a), or to pay the renewal fee
11 specified in subdivision (b) of Section ~~1228.8~~ 1525, shall result
12 by operation of law in the revocation of any right acquired pursuant
13 to this article.

14 *SEC. 10. Section 1228.7 of the Water Code is amended to read:*

15 1228.7. (a) Any registrant may change the point of diversion
16 or place of use by delivering to the board an amended registration
17 form in accordance with Section 1228.3, including payment of the
18 registration fee specified in ~~subdivision (a) of Section 1228.8~~
19 *Section 1525*, except that the purpose of the use may not be
20 changed and the change may not operate to the injury of any legal
21 user of the water involved.

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

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

33 *SEC. 11. Section 1240.5 is added to the Water Code, to read:*

34 1240.5. *In any proceeding before the board in which it is*
35 *alleged that a right to appropriate water has ceased or is subject*
36 *to forfeiture or revocation for nonuse, there shall be a rebuttable*
37 *presumption that no use occurred unless that use is included in a*
38 *statement submitted pursuant to any reporting or monitoring*
39 *requirement established under any permit, license, certificate,*
40 *registration, decision or order, or regulation issued by the board*

1 pursuant to this division, Section 275, Article 7 (commencing with
 2 Section 13550) of Division 7, or the public trust doctrine under
 3 this part, and the statement is submitted within six months after it
 4 is required to be filed with the board. This section does not apply
 5 to any diversion or use that occurred before January 1, 2009.

6 SEC. 12. Section 1525 of the Water Code is amended to read:

7 1525. (a) Each person or entity who holds a permit or license
 8 to appropriate water, and each lessor of water leased under Chapter
 9 1.5 (commencing with Section 1020) of Part 1, shall pay an annual
 10 fee according to a fee schedule established by the board.

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

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

14 (2) A registration of appropriation for a small domestic use or
 15 livestock stockpond use.

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

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

22 (5) A petition to change the conditions of a permit or license,
 23 requested by the permittee or licensee, that is not otherwise subject
 24 to paragraph (3) or (4).

25 (6) *A petition under Section 1707 or 1740 to change the point*
 26 *of diversion, place of use, or purpose of use of a water right that*
 27 *is not subject to a permit or license to appropriate water.*

28 ~~(6)~~

29 (7) A petition to change the point of discharge, place of use, or
 30 purpose of use, of treated wastewater, requested pursuant to Section
 31 1211.

32 ~~(7)~~

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

34 ~~(8)~~

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

36 ~~(9)~~

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

39 (11) *A statement of water diversion and use pursuant to Part*
 40 *5.1 (commencing with Section 5100).*

1 (c) The board shall set the fee schedule authorized by this section
2 so that the total amount of fees collected pursuant to this section
3 equals that amount necessary to recover costs incurred in
4 connection with the issuance, administration, review, monitoring,
5 and enforcement of permits, licenses, certificates, and registrations
6 to appropriate water, water leases, *statements of diversion and use*,
7 and orders approving changes in point of discharge, place of use,
8 or purpose of use of treated wastewater. The board may include,
9 as recoverable costs, but is not limited to including, the costs
10 incurred in reviewing applications, registrations, *statements of*
11 *diversion and use*, petitions and requests, prescribing terms of
12 permits, licenses, registrations, and change orders, enforcing and
13 evaluating compliance with permits, licenses, certificates,
14 registrations, change orders, and water leases, inspection,
15 monitoring, planning, modeling, reviewing documents prepared
16 for the purpose of regulating the diversion and use of water,
17 applying and enforcing *the public trust doctrine, Section 275*, the
18 prohibition set forth in Section 1052 against the unauthorized
19 diversion or use of water subject to this division, *the requirements*
20 *under Part 5.1 (commencing with Section 5100) for filing*
21 *statements of diversion and use*, and the administrative costs
22 incurred in connection with carrying out these actions.

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

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

32 (3) The board shall set the amount of total revenue collected
33 each year through the fees authorized by this section at an amount
34 equal to the revenue levels set forth in the annual Budget Act for
35 this activity. The board shall review and revise the fees each fiscal
36 year as necessary to conform with the revenue levels set forth in
37 the annual Budget Act. If the board determines that the revenue
38 collected during the preceding year was greater than, or less than,
39 the revenue levels set forth in the annual Budget Act, the board

1 may further adjust the annual fees to compensate for the over or
2 under collection of revenue.

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

5 (f) *Fees imposed on holders of riparian water rights or rights*
6 *to water appropriated prior to December 19, 1914, pursuant to*
7 *this chapter shall bear a fair or reasonable relationship to the*
8 *payor’s burden on, or benefits from, the board’s water rights*
9 *program funded by those fees.*

10 SEC. 13. *Section 1535 of the Water Code is amended to read:*

11 1535. (a) Any fee subject to this chapter that is required in
12 connection with the filing of an application, registration, request,
13 *statement*, or proof of claim, other than an annual fee required after
14 the period covered by the initial filing fee, shall be paid to the
15 board.

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

21 SEC. 14. *Section 1538 of the Water Code is amended to read:*

22 1538. (a) In any proceeding pursuant to Section 1052 in which
23 it is determined that there has been a violation of the prohibition
24 against the unauthorized diversion or use of water subject to this
25 division, the board or court, as the case may be, may impose an
26 additional liability in the amount of *150 percent of any annual fees*
27 *that would have been required under this division if the diversion*
28 *or use had been authorized by a permit or license to appropriate*
29 *water.*

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

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

1 *SEC. 15. Section 1550 of the Water Code is amended to read:*

2 1550. (a) There is in the State Treasury a Water Rights Fund,
3 which is hereby established.

4 (b) *There is hereby established the Water Rights Protection*
5 *Subaccount in the Water Rights Fund. It is the intent of the*
6 *Legislature that the moneys in the Water Rights Protection*
7 *Subaccount be available for expenditure, upon appropriation by*
8 *the Legislature, to reduce fees on water right holders, for water*
9 *restoration projects, conservancies, and for General Fund*
10 *purposes.*

11 *SEC. 16. Section 1551 of the Water Code is amended to read:*

12 1551. All of the following shall be deposited in the Water
13 Rights Fund:

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

17 (b) All funds collected under Section 1052, ~~1845~~ *or Article 4*
18 *(commencing with Section 1845) of Chapter 12, and Section 5107.*

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

22 *SEC. 17. Section 1825 of the Water Code is amended to read:*

23 1825. It is the intent of the Legislature that the state should
24 take vigorous action to enforce the terms and conditions of permits,
25 licenses, certifications, and registrations to appropriate water, to
26 enforce state board orders and decisions, ~~and~~ *to prevent the*
27 *unlawful diversion of water, and to prevent the waste,*
28 *unreasonable use, unreasonable method of use, or unreasonable*
29 *method of diversion, of water, and to enforce reporting and*
30 *monitoring requirements.*

31 *SEC. 18. Section 1826 is added to the Water Code, to read:*

32 1826. *The board shall establish a schedule of penalties that*
33 *applies to small farms for de minimis water right violations under*
34 *this division.*

35 *SEC. 19. Section 1845 of the Water Code is amended to read:*

36 1845. (a) Upon the failure of any person to comply with a
37 cease and desist order issued by the board pursuant to this chapter,
38 the Attorney General, upon the request of the board, shall petition
39 the superior court for the issuance of prohibitory or mandatory

1 injunctive relief as appropriate, including a temporary restraining
2 order, preliminary injunction, or permanent injunction.

3 (b) (1) Any person or entity who violates a cease and desist
4 order issued pursuant to this chapter may be liable for a sum *in an*
5 *amount* not to exceed ~~one thousand dollars (\$1,000) for each day~~
6 ~~in which the violation occurs; the greater of either of the following~~
7 *amounts:*

8 (A) *One thousand dollars (\$1,000) for each day in which the*
9 *violation occurs for the first enforcement proceeding or five*
10 *thousand (\$5,000) for each day in which the violation occurs for*
11 *any subsequent enforcement proceeding.*

12 (B) *The highest market value of the water.*

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

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

18 (c) In determining the appropriate amount, the court, or the
19 board, as the case may be, shall take into consideration all relevant
20 circumstances, including, but not limited to, the extent of harm
21 caused by the violation, the nature and persistence of the violation,
22 the length of time over which the violation occurs, and, *with respect*
23 *to the violator, the ability to pay, the effect on the ability to continue*
24 *in business, the corrective action, if any, taken by the violator, and*
25 *other matters as justice may require.*

26 (d) (1) All funds recovered pursuant to this section shall be
27 deposited in the Water Rights Fund established pursuant to Section
28 1550.

29 (2) *Any funds recovered pursuant to this section that exceed the*
30 *amounts that were authorized before the effective date of the*
31 *amendments made to this section by Senate Bill 5 of the 2009–10*
32 *Seventh Extraordinary Session of the Legislature shall be deposited*
33 *in the Water Rights Protection Subaccount in the Water Rights*
34 *Funds established pursuant to Section 1550.*

35 (e) *The increase in the amount of penalties that may be imposed*
36 *pursuant to the amendments made to this section during the*
37 *2009–10 Seventh Extraordinary Session of the Legislature does*
38 *not apply to violations that occurred prior to the effective date of*
39 *those amendments.*

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

1 1846. (a) Any person or entity subject to a monitoring or
2 reporting requirement specified in subdivision (f) who violates
3 that reporting or monitoring requirement, makes a material
4 misstatement in any record or report submitted under that
5 reporting or monitoring requirement, or tampers with or renders
6 inaccurate any monitoring device required under that reporting
7 or monitoring requirement shall be liable for a sum not to exceed
8 five hundred dollars (\$500) for each day in which the violation
9 occurs.

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

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

15 (d) In determining the appropriate amount, the court, or the
16 board, as the case may be, shall take into consideration all relevant
17 circumstances, including, but not limited to, the extent of harm
18 caused by the violation, the nature and persistence of the violation,
19 the length of time over which the violation occurs, and, with respect
20 to the violator, the ability to pay, the effect on the ability to
21 continue in business, the corrective action, if any, taken by the
22 violator, and other matters as justice may require.

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

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

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

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

38 SEC. 21. Section 1847 is added to the Water Code, to read:

39 1847. (a) Any person or entity who violates any term or
40 condition of a permit, license, certificate, or registration issued

1 *under this division or any order or regulation adopted by the board*
2 *under Section 275 may be liable in an amount not to exceed five*
3 *hundred dollars (\$500) for each day in which the violation occurs.*

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

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

9 *(d) In determining the appropriate amount, the court, or the*
10 *board, as the case may be, shall take into consideration all relevant*
11 *circumstances, including, but not limited to, the extent of harm*
12 *caused by the violation, the nature and persistence of the violation,*
13 *the length of time over which the violation occurs, and, with respect*
14 *to the violator, the ability to pay, the effect on the ability to*
15 *continue in business, the corrective action, if any, taken by the*
16 *violator, and other matters as justice may require.*

17 *(e) No liability shall be recoverable under this section for any*
18 *violation for which liability is recovered under Section 1052 or*
19 *1846.*

20 *(f) All funds recovered pursuant to this section shall be deposited*
21 *in the Water Rights Protection Subaccount in the Water Rights*
22 *Fund established pursuant to Section 1550.*

23 *SEC. 22. Section 2525 of the Water Code is amended to read:*

24 *2525. Upon petition signed by one or more claimants to water*
25 *of any stream system, requesting the determination of the rights*
26 *of the various claimants to the water of that stream system, the*
27 *board shall, if, upon investigation, it finds the facts and conditions*
28 *are such that the public interest and necessity will be served by a*
29 *determination of the water rights involved, enter an order granting*
30 *the petition and make proper arrangements to proceed with the*
31 *determination. The board may initiate a determination of rights*
32 *under its own motion if after a hearing it finds, based on substantial*
33 *evidence, that the public interest and necessity will be served by*
34 *a determination of the rights involved.*

35 *SEC. 23. Section 2526 of the Water Code is amended to read:*

36 *2526. As soon as practicable after granting the petition or*
37 *motion the board shall prepare and issue a notice setting forth the*
38 *following:*

39 *(a) The facts of the entry of the order and of the pendency of*
40 *the proceedings; proceedings.*

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

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

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

13 *SEC. 24. Section 2550 of the Water Code is amended to read:*

14 2550. As soon as practicable after granting the petition *or*
15 *motion*, the board shall begin an investigation of the stream system,
16 of the diversion of water, of all beneficial uses being made of the
17 water, and of the water supply available for those uses, and shall
18 gather such other data and information as may be essential to the
19 proper determination of the water rights in the stream system.

20 *SEC. 25. Section 2763.5 of the Water Code is amended to read:*

21 2763.5. (a) No exception to the order of determination shall
22 be considered, except in the court's discretion for good cause
23 shown, unless the matter of the exception was presented to the
24 board in the form of an objection. Good cause includes, but is not
25 limited to, the existence of newly discovered relevant evidence
26 which, in the exercise of reasonable diligence, could not have been
27 presented to the board during the board's proceedings.

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

33 *SEC. 26. Section 5100 of the Water Code is amended to read:*

34 5100. As used in this part:

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

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

1 (c) “Diversion” means taking water by gravity or pumping from
 2 a surface stream or subterranean stream flowing through a known
 3 and definite channel, or other body of surface water, into a canal,
 4 pipeline, or other conduit, and includes impoundment of water in
 5 a reservoir.

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

10 ~~(e) “Tidal zone” means those portions of the Sacramento-San~~
 11 ~~Joaquin Delta as described in Section 12220 that are ordinarily~~
 12 ~~subject to tidal action.~~

13 *SEC. 27. Section 5101 of the Water Code is amended to read:*
 14 5101. Each person who, after December 31, 1965, diverts water
 15 shall file with the board, prior to July 1 of the succeeding year, a
 16 statement of his *or her* diversion and use; ~~provided, however, that~~
 17 ~~no statement need, except that a statement is not required to be~~
 18 filed if the diversion is any of the following:

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

22 (b) Covered by ~~an application~~, *a registration for small domestic*
 23 *or livestock stockpond uses, or permit or license to appropriate*
 24 *water on file with the board.*

25 (c) Included in a notice filed pursuant to Part 5 (commencing
 26 with Section 4999) ~~of this division.~~

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

33 ~~(e) Reported by the department in its hydrologic data bulletins.~~

34 ~~(f) Included in the consumptive use data for the delta lowlands~~
 35 ~~published by the department in its hydrologic data bulletins.~~

36 ~~(g)~~

37 (e) Included in annual reports filed with a court or the board by
 38 a watermaster appointed by a court or pursuant to statute to
 39 administer a final judgment determining rights to water, which
 40 reports identify the persons who have diverted water and give the

1 general place of use and the quantity of water ~~which~~ *that* has been
2 diverted from each source.

3 ~~(h)~~

4 (f) For use in compliance with ~~the provisions of~~ Article 2.5
5 (commencing with Section 1226) *or Article 2.7 (commencing with*
6 *Section 1228)* of Chapter 1 of Part 2 ~~of this division.~~

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

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

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

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

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

19 SEC. 28. *Section 5103 of the Water Code is amended to read:*
20 5103. Each statement shall be prepared on a form provided by
21 the board. The statement shall include all of the following
22 information:

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

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

28 (c) The place of diversion. ~~If a public land survey has been~~
29 ~~made, location of~~ *The location of the diversion works shall be*
30 ~~described~~ *depicted on a specific United States Geological Survey*
31 *topographic map, or shall be identified using the California*
32 *Coordinate System, or latitude and longitude measurements. If*
33 *assigned, the public land description to the nearest 40-acre*
34 *subdivision. If not, it shall be described by reference to nearest*
35 *local landmarks or other recorded surveys and the assessor's parcel*
36 *number shall also be provided.*

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

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

8 ~~(2) Paragraph (1) does not apply to a surface water diversion~~
9 ~~with a combined diversion capacity from a natural channel that is~~
10 ~~less than 50 cubic feet per second or to diverters using siphons in~~
11 ~~the tidal zone.~~

12 ~~(3)~~

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

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

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

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

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

29 ~~(f) For persons not subject to paragraph (1) of subdivision (e),~~
30 ~~a description of the acreage of each crop irrigated, the average~~
31 ~~number of people served with water, the average number of stock~~
32 ~~watered, and the nature and extent of any other use during the~~
33 ~~preceding calendar year, or other equivalent information that~~
34 ~~indicates the quantity of water used as may be prescribed by the~~
35 ~~board. Those who maintain water measuring devices and keep~~
36 ~~monthly records of water diversions shall state the quantity of~~
37 ~~water diverted by months during the preceding calendar year.~~

38 ~~(g)~~

39 (f) The purpose of use.

40 ~~(h)~~

1 (g) A general description of the area in which the water was
2 used. ~~If the water was used on an area within the $\frac{1}{16}$ -section~~
3 ~~containing the point of diversion, a statement to that effect will~~
4 ~~suffice; otherwise a description or sketch of the general area of~~
5 ~~use shall be given. The location of the place of use shall be depicted~~
6 ~~on a specific United States Geological Survey topographic map~~
7 ~~and on any other maps with identifiable landmarks. If assigned,~~
8 ~~the public land description to the nearest 40-acre subdivision and~~
9 ~~the assessor's parcel number shall also be provided.~~

10 (i)

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

13 SEC. 29. Section 5106 of the Water Code is amended to read:

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

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

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

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

30 (4) This subdivision does not affect the requirement in Section
31 2527 to provide notice to all persons who own land that appears
32 to be riparian to the stream system.

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

38 (d) (1) *In any proceeding before the board in which it is alleged*
39 *that an appropriative right has ceased or is subject to forfeiture*
40 *for nonuse because water has not been put to beneficial use, there*

1 shall be a rebuttable presumption that no use required to be
2 included in a statement submitted under this part occurred unless
3 that use is included in a statement submitted under this part and
4 that the statement is submitted within six months after it is required
5 to be filed with the board.

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

8 SEC. 30. Section 5107 of the Water Code is amended to read:

9 5107. (a) The making of any willful misstatement pursuant to
10 this part is a misdemeanor punishable by a fine not exceeding one
11 thousand dollars (\$1,000) or by imprisonment in the county jail
12 for not to exceed six months, or both.

13 (b) Any person who fails to file a statement required to be filed
14 under this part for a diversion or use that occurs after January 1,
15 2009, who tampers with any measuring device, or who makes a
16 material misstatement pursuant to this part may be liable civilly
17 as provided in ~~subdivision (e)~~ subdivisions (c) and (d).

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

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

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

35 (3) For knowingly tampering with any measuring device or
36 knowingly making a material misstatement in a statement filed
37 under this part, twenty-five thousand dollars (\$25,000), plus one
38 thousand dollars (\$1,000) for each day on which the violation
39 continues if the person fails to correct the violation within 30 days

1 after the board has called the violation to the attention of that
2 person.

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

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

16 ~~(e) Civil liability may be administratively imposed by the board
17 pursuant to Section 1055 in an amount not to exceed five hundred
18 dollars (\$500) for each violation.~~

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

- 22 (1) The extent of harm caused by the violation.
- 23 (2) The nature and persistence of the violation.
- 24 (3) The length of time over which the violation occurs.
- 25 (4) Any corrective action undertaken by the violator.
- 26 (5) *The ability of the violator to pay.*
- 27 (6) *The effect on the ability of the violator to continue in*
28 *business.*
- 29 (7) *Other matters as justice may require.*

30 ~~(f)~~
31 (f) (1) All funds recovered pursuant to this section shall be
32 deposited in the Water Rights Fund established pursuant to Section
33 1550.

34 (2) Any funds recovered pursuant to this section that exceed
35 those that were authorized before the effective date of the
36 amendments made to this section by Senate Bill 5 of the 2009–10
37 Seventh Extraordinary Session of the Legislature shall be deposited
38 in the Water Rights Protection Subaccount in the Water Rights
39 Fund established pursuant to Section 1550.

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

3 SEC. 31. Section 5108 of the Water Code is repealed.

4 ~~5108. Statements filed pursuant to this part shall be for~~
5 ~~informational purposes only, and neither the failure to file a~~
6 ~~statement nor any error in the information filed shall have any~~
7 ~~legal consequences whatsoever other than those specified in this~~
8 ~~part.~~

9 SEC. 32. Item 3940-001-0439 of Section 2.00 of the Budget
10 Act of 2009 is amended to read:

11	3940-001-0439—For support of State Water Resources Control	
12	Board.....	238,113,000
13	Schedule:	
14	(1) 10-Water Quality.....	439,650,000
15	(2) 20-Water Rights.....	11,658,000
16		15,408,000
17	(3) 30.01-Administration.....	20,886,000
18		21,059,000
19	(4) 30.02-Distributed Administration.....	-20,886,000
20		-21,059,000
21	(5) Reimbursements.....	-8,932,000
22	(6) Amount payable from the General	
23	Fund (Item 3940-001-0001).....	-40,575,000
24	(7) Amount payable from the Unified Pro-	
25	gram Account (Item 3940-001-0028)....	-621,000
26	(8) Amount payable from the Waste Dis-	
27	charge Permit Fund (Item 3940-001-	
28	0193).....	-78,768,000
29	(9) Amount payable from the Marine Inva-	
30	sive Species Control Fund (Item 3940-	
31	001-0212).....	-103,000
32	(10) Amount payable from the Public Re-	
33	sources Account, Cigarette and Tobacco	
34	Products Surtax Fund (Item 3940-001-	
35	0235).....	-2,039,000
36	(11) Amount payable from the Integrated	
37	Waste Management Account, Integrated	
38	Waste Management Fund (Item 3940-	
39	001-0387).....	-6,757,000
40		

1	(12) Amount payable from the Water Recy-	
2	cling Subaccount (Item 3940-001-	
3	0419).....	-1,150,000
4	(13) Amount payable from the Drainage	
5	Management Subaccount (Item 3940-	
6	001-0422).....	-515,000
7	(14) Amount payable from the Seawater In-	
8	trusion Control Subaccount (Item 3940-	
9	001-0424).....	-222,000
10	(15) Amount payable from the Underground	
11	Storage Tank Tester Account (Item	
12	3940-001-0436).....	-64,000
13	(16) Amount payable from the 1984 State	
14	Clean Water Bond Fund (Item 3940-	
15	001-0740).....	-322,000
16	(17) Amount payable from the Federal	
17	Trust Fund (Item 3940-001-0890).....	-51,353,000
18	(18) Amount payable from the Water	
19	Rights Fund (Item 3940-001-3058)....	-7,447,000
20		-11,197,000
21	(19) Amount payable from the Watershed	
22	Protection Subaccount (Item 3940-001-	
23	6013).....	-250,000
24	(20) Amount payable from the Santa Ana	
25	River Watershed Subaccount (Item	
26	3940-001-6016).....	-250,000
27	(21) Amount payable from the Lake Elsinore	
28	and San Jacinto Watershed Subaccount	
29	(Item 3940-001-6017).....	-150,000
30	(22) Amount payable from the Nonpoint	
31	Source Pollution Control Subaccount	
32	(Item 3940-001-6019).....	-200,000
33	(23) Amount payable from the State Revolv-	
34	ing Fund Loan Subaccount (Item 3940-	
35	001-6020).....	-81,000
36	(24) Amount payable from the Wastewater	
37	Construction Grant Subaccount (Item	
38	3940-001-6021).....	-23,000

1	(25) Amount payable from the Coastal	
2	Nonpoint Source Control Subaccount	
3	(Item 3940-001-6022).....	-150,000
4	(26) Amount payable from the Water Secu-	
5	rity, Clean Drinking Water, Coastal and	
6	Beach Protection Fund of 2002 (Item	
7	3940-001-6031).....	-3,000,000
8	(27) Amount payable from the Safe Drinking	
9	Water, Water Quality and Supply,	
10	Flood Control, River and Coastal Pro-	
11	tection Fund of 2006 (Item 3940-001-	
12	6051).....	-4,073,000
13	(28) Amount payable from the Petroleum	
14	Underground Storage Tank Financing	
15	Account (Item 3940-001-8026).....	-618,000
16	(29) Amount payable from the State Water	
17	Pollution Control Revolving Fund Ad-	
18	ministration Fund (Item 3940-001-	
19	9739).....	-5,532,000

20 Provisions:

- 21 1. Notwithstanding any other provision of law, upon ap-
 22 proval and order of the Director of Finance, the State
 23 Water Resources Control Board may borrow sufficient
 24 funds for cash purposes from special funds that other-
 25 wise provide support for the board. Any such loans
 26 are to be repaid with interest at the rate earned in the
 27 Pooled Money Investment Account.
- 28 2. *Of the amount contained in Schedule (2), \$3,750,000*
 29 *shall be used to fund 25.0 permanent positions in*
 30 *support of water rights enforcement.*

31
32 *SEC. 32. Item 3940-001-3058 of Section 2.00 of the Budget*
33 *Act of 2009 is amended to read:*

34		
35	3940-001-3058—For support of State Water Resources Control	
36	Board, for payment to Item 3940-001-0439, payable from	
37	the Water Rights Fund.....	7,447,000
38		11,197,000

1 *Provisions:*

2 1. *The increase in appropriation in this item shall be*
3 *paid only from the fee revenue in the Water Rights*
4 *Fund.*

5
6 *SEC. 33. Commencing with the 2010–11 fiscal year, and*
7 *notwithstanding Section 13340 of the Government Code, three*
8 *million seven hundred fifty thousand dollars (\$3,750,000) is hereby*
9 *continuously appropriated, without regard to fiscal years, on an*
10 *annual basis, only from the fee revenue in the Water Rights Fund*
11 *to the State Water Resources Control Board for the purposes of*
12 *funding 25.0 permanent water right enforcement positions, as*
13 *provided in Schedule (2) of Item 3940-001-0439 of Section 2.00*
14 *of the Budget Act of 2009, as amended by this act.*

15 *SEC. 34. This act shall take effect only in Senate Bill 1, Senate*
16 *Bill 6, and Senate Bill 7 of the 2009–10 Seventh Extraordinary*
17 *Session are enacted and become effective.*

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19
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21
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**All matter omitted in this version of the bill
appears in the bill as amended in Senate,
October 29, 2009 (JR11)**