

Assembly Bill No. 2267

CHAPTER 652

An act to amend Sections 1055, 1055.2, 1536, 1825, 1831, 1832, 1834, 1845, and 1850 of, and to repeal Sections 1003.5 and 1833 of, the Water Code, relating to water.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2267, Kelley. Water rights.

(1) Existing law authorizes the executive director of the State Water Resources Control Board to issue a complaint to any person on whom civil liability may be imposed for an unauthorized water diversion or certain misstatements relating to water diversions. Existing law provides that no person may be subject to both administrative civil liability and civil liability imposed by the superior court for unauthorized water diversions pursuant to statute.

This bill would extend the authority of the state board to issue a complaint to any person on whom civil liability may be imposed for failure to pay an application fee for a permit to appropriate water and for the violation of a cease and desist order, and would provide that no person may be subject to both administrative civil liability and civil liability imposed by the superior court for those violations.

(2) Existing law requires the State Water Resources Control Board to cancel an application for a permit to appropriate water if an application fee is not received by the board within 30 days after notice by the board.

This bill, instead, would authorize the board to cancel the application and specify that civil liability may be imposed both administratively and by the superior court. The bill would provide that the applicant may be liable in an amount not to exceed \$500 for each day until the application fee is received, or the application is otherwise canceled or withdrawn.

(3) Existing law authorizes the board to issue a preliminary cease and desist order to any person holding a permit or license to appropriate water if the board determines that person is violating a term or condition of that permit or license and provides for the issue of a final cease and desist order. Existing law requires the Attorney General, upon the failure of any person to comply with a final cease and desist order and, if so requested by the board, to petition the superior court for the issuance of relief.

This bill would delete references to a preliminary or final cease and desist order and, instead, would authorize the board to issue a cease and desist order to any person who the board determines is violating, or threatening to violate, a prohibition against unauthorized diversion or use of water, any term or condition of a permit, license, certification or registration issued by the board, or prescribed orders or decisions of the board. The bill would revise provisions relating to notification by the board in the event of a violation or a threatened violation. The bill would specify that civil liability may be imposed by the superior court.

(4) Existing law makes a statement of legislative intent regarding the need for the state to take action to enforce the terms and conditions of permits and licenses to appropriate water.

This bill, in addition, would declare that it is the intent of the Legislature that the state take action to enforce certifications and registrations to appropriate water and to enforce the orders and decisions of the board.

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

SECTION 1. Section 1003.5 of the Water Code is repealed.

SEC. 2. 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 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 a member of the board as it may specify.

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

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

SEC. 3. 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, or Section 1845 for the same act or failure to act.

SEC. 4. Section 1536 of the Water Code is amended to read:

1536. (a) If an annual application fee is not paid when due the board shall notify the applicant by registered mail of the amount due, and of the provisions of this section.

(b) If the fee is not received by the board within 30 days after the notice has been mailed, the application may be canceled.

(c) (1) If the fee is not received by the board within 30 days after the notice has been mailed, the applicant may be liable civilly for a sum not to exceed five hundred dollars (\$500) for each day until the fee is received, the application is canceled, or the application is withdrawn, whichever occurs first.

(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 those sums.

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

SEC. 5. 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.

SEC. 6. Section 1831 of the Water Code is amended to read:

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

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

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

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

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

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

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



Division 7, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

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

SEC. 7. Section 1832 of the Water Code is amended to read:

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

SEC. 8. Section 1833 of the Water Code is repealed.

SEC. 9. Section 1834 of the Water Code is amended to read:

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

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

SEC. 10. 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 not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

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

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



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

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

SEC. 11. Section 1850 of the Water Code is amended to read:

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

