AMENDED IN ASSEMBLY NOVEMBER 4, 2009

AMENDED IN SENATE NOVEMBER 2, 2009

CALIFORNIA LEGISLATURE—2009–10 SEVENTH EXTRAORDINARY SESSION

SENATE BILL No. 8

Introduced by Senator Steinberg

October 28, 2009

~~An act relating to water, and making an appropriation therefor.~~ *An act to amend Sections 5100, 5101, 5103, and 5107 of, to add Chapter 2.7 (commencing with Section 348) to Division 1 of, and to repeal Section 5108 of, the Water Code, (PU 20090AB__090095AMD) (PU RN20092516504) 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 8, as amended, Steinberg. *Water diversion and use: reporting: resources:* Disaster Preparedness and Flood Prevention Bond Act of 2006: Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

(1) 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 diversion 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.

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

The bill would make additional conforming changes and would set forth related legislative findings and declarations.

(2) 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.

~~(1)~~

(3) Under existing law, various bond acts have been approved by the voters to provide funds for water projects, facilities, and programs. The Disaster Preparedness and Flood Prevention Bond Act of 2006, a bond act approved by the voters at the November 7, 2006, statewide general election, authorizes the issuance of bonds in the amount of $4,090,000,000 for the purposes of financing disaster preparedness and flood prevention projects. The Safe Drinking Water, Water Quality and

Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative bond act approved by the voters at the November 7, 2006, statewide general election, authorizes the issuance of bonds in the amount of $5,388,000,000 for the purposes of financing a safe drinking water, water quality and supply, flood control, and resource protection program.

This bill would appropriate $546,000,000 from these bond acts for integrated regional water management, flood control and management, and natural community conservation planing, as provided.

~~(2)~~

(4) The bill would take effect only if SB 1, ~~SB 5,~~ SB 6, and SB 7 of the 2009–10 7th Extraordinary Session of the Legislature 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:

SECTION 1. The Legislature finds and declares all of the following:

(a) The San Francisco Bay-Sacramento-San Joaquin River Delta (Delta) is in the midst of an ecological crisis. Its unique character and capacity to serve California are threatened by a variety of factors, including diversions of water, pollution, urbanization, flood and seismic risks, and invasive species.

(b) The water that is found in, and delivered through, the Delta is the source of drinking water for 25,000,000 Californians, fuels a $37,000,000,000 agricultural industry, and serves as an important habitat for over 750 plant and animal species.

(c) It has been estimated that there are over 1,800 agricultural, municipal, and industrial diversions in the Delta that, combined, divert 5 percent of the freshwater flows from the Delta watershed. However, because none of these in-Delta diverters are required to measure and report their water diversion and use, there is presently little data regarding the nature, extent, and location of these diversions.

(d) Given the well-known importance of water to the state's health, economy, and welfare, including to its ecosystems and natural resources, water measurement and reporting are required for most diversions.

(e) The Delta Vision Committee Implementation Report recommends improved monitoring and reporting, including the elimination of exemptions from requirements for the filing of statements of water diversion and use.

SEC. 2. Chapter 2.7 (commencing with Section 348) is added to Division 1 of the Water Code, to read:

CHAPTER 2.7. WATER DIVERSION AND USE REPORTS

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

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

SEC. 3. Section 5100 of the Water Code is amended to read:

5100. As used in this part:

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

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

(c) "Diversion" means taking water by gravity or pumping from a surface stream or subterranean stream flowing through a known and definite channel, or other body of surface water, into a canal,

pipeline, or other conduit, and includes impoundment of water in a reservoir.

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

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

SEC. 4. Section 5101 of the Water Code is amended to read:

5101. Each person who, after December 31, 1965, diverts water shall file with the board, prior to July 1 of the succeeding year, a statement of his *or her* diversion and ~~use; provided, however, that no statement need~~ *use, except that a statement is not required to* be filed if the diversion is any of the following:

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

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

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

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

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

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

~~(g)~~

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

~~(h)~~

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

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

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

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

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

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

SEC. 5. Section 5103 of the Water Code is amended to read:

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

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

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

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

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

(e) (1) On and after January 1, 2012, monthly records of water diversions. The measurements of the diversion shall be made using best available technologies and best professional practices. Nothing in this paragraph shall be construed to require the implementation

of technologies or practices ~~that are~~ *by a person who provides to the board documentation demonstrating that the implementation of those practices is* not locally cost effective.

~~(2) Paragraph (1) 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.~~

~~(3)~~

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

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

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

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

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

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

~~(g)~~

(f) The purpose of use.

~~(h)~~

(g) A general description of the area in which the water was used. ~~If the water was used on an area within the 1/16 section containing the point of diversion, a statement to that effect will suffice; otherwise a description or sketch of the general area of~~

~~use shall be given.~~ *The location of the place of use shall be depicted on a specific United States Geological Survey topographic map and on any other maps with identifiable landmarks. If assigned, the public land description to the nearest 40-acre subdivision and the assessor's parcel number shall also be provided.*

~~(i)~~

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

SEC. 6. Section 5107 of the Water Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(1) The extent of harm caused by the violation.

(2) The nature and persistence of the violation.

(3) The length of time over which the violation occurs.

(4) Any corrective action undertaken by the violator.

~~(d)~~

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

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

SEC. 7. Section 5108 of the Water Code is repealed.

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

~~SECTION 1.~~

SEC. 8. The sum of five hundred forty-six million dollars ($546,000,000) is hereby appropriated as follows:

(a) Two hundred fifty million dollars ($250,000,000) from the funds made available by, and consistent with, Section 75026 of the Public Resources Code to the Department of Water Resources for integrated regional water management grants and expenditures for programs and projects that, when implemented, will help reduce dependence on the Sacramento-San Joaquin Delta for water supply.

(b) Thirty-two million dollars ($32,000,000) from the funds made available by, and consistent with, Section 75033 of the Public Resources Code to the Department of Water Resources for flood control projects in the Sacramento-San Joaquin Delta designed to reduce the potential for levee failures that would jeopardize water conveyance.

(c) One hundred seventy million dollars ($170,000,000) from the funds made available by, and consistent with, subdivision (c) of Section 5096.821 of the Public Resources Code to the Department of Water Resources to reduce the risk of levee failure in the Sacramento-San Joaquin Delta that would jeopardize water conveyance.

(d) Seventy million dollars ($70,000,000) from the funds made available by, and consistent with, Section 5096.827 of the Public Resources Code to the Department of Water Resources for grants for stormwater flood management projects.

(e) Twenty-four million dollars ($24,000,000) from the funds made available by, and consistent with, subdivision (c) of Section 75055 of the Public Resources Code to the Wildlife Conservation Board for grants to local agencies to implement, or assist in the establishment of, natural community conservation plans for areas in or around the Sacramento-San Joaquin Delta pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code.

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

3940-001-0439—For support of State Water Resources Control Board		238,113,000
Schedule:		
(1) 10-Water Quality	439,650,000	
(2) 20-Water Rights	~~11,658,000~~ *15,408,000*	

(3) 30.01-Administration..... ~~20,886,000~~
21,059,000
(4) 30.02-Distributed Administration..... ~~−20,886,000~~
−21,059,000
(5) Reimbursements..... −8,932,000
(6) Amount payable from the General Fund (Item 3940-001-0001)..... −40,575,000
(7) Amount payable from the Unified Program Account (Item 3940-001-0028).... −621,000
(8) Amount payable from the Waste Discharge Permit Fund (Item 3940-001-0193)..... −78,768,000
(9) Amount payable from the Marine Invasive Species Control Fund (Item 3940-001-0212)..... −103,000
(10) Amount payable from the Public Resources Account, Cigarette and Tobacco Products Surtax Fund (Item 3940-001-0235)..... −2,039,000
(11) Amount payable from the Integrated Waste Management Account, Integrated Waste Management Fund (Item 3940-001-0387)..... −6,757,000
(12) Amount payable from the Water Recycling Subaccount (Item 3940-001-0419)..... −1,150,000
(13) Amount payable from the Drainage Management Subaccount (Item 3940-001-0422)..... −515,000
(14) Amount payable from the Seawater Intrusion Control Subaccount (Item 3940-001-0424)..... −222,000
(15) Amount payable from the Underground Storage Tank Tester Account (Item 3940-001-0436)..... −64,000
(16) Amount payable from the 1984 State Clean Water Bond Fund (Item 3940-001-0740)..... −322,000
(17) Amount payable from the Federal Trust Fund (Item 3940-001-0890)..... −51,353,000

(18) Amount payable from the Water Rights Fund (Item 3940-001-3058).... ~~−7,447,000~~ *−11,197,000*

(19) Amount payable from the Watershed Protection Subaccount (Item 3940-001-6013)..... −250,000

(20) Amount payable from the Santa Ana River Watershed Subaccount (Item 3940-001-6016)..... −250,000

(21) Amount payable from the Lake Elsinore and San Jacinto Watershed Subaccount (Item 3940-001-6017)..... −150,000

(22) Amount payable from the Nonpoint Source Pollution Control Subaccount (Item 3940-001-6019)..... −200,000

(23) Amount payable from the State Revolving Fund Loan Subaccount (Item 3940-001-6020)..... −81,000

(24) Amount payable from the Wastewater Construction Grant Subaccount (Item 3940-001-6021)..... −23,000

(25) Amount payable from the Coastal Nonpoint Source Control Subaccount (Item 3940-001-6022)..... −150,000

(26) Amount payable from the Water Security, Clean Drinking Water, Coastal and Beach Protection Fund of 2002 (Item 3940-001-6031)..... −3,000,000

(27) Amount payable from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2006 (Item 3940-001-6051)..... −4,073,000

(28) Amount payable from the Petroleum Underground Storage Tank Financing Account (Item 3940-001-8026)..... −618,000

(29) Amount payable from the State Water Pollution Control Revolving Fund Administration Fund (Item 3940-001-9739)..... −5,532,000

Provisions:

1. Notwithstanding any other provision of law, upon approval and order of the Director of Finance, the State Water Resources Control Board may borrow sufficient funds for cash purposes from special funds that otherwise provide support for the board. Any such loans are to be repaid with interest at the rate earned in the Pooled Money Investment Account.

2. Of the amount contained in Schedule (2), $3,750,000 shall be used to fund 25.0 permanent positions in support of water rights enforcement.

SEC. 10. Item 3940-001-3058 of Section 2.00 of the Budget Act of 2009 is amended to read:

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

Provisions:

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

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

~~SEC. 2.~~

SEC. 12. This act shall take effect only if Senate Bill 1, ~~Senate Bill 5,~~ Senate Bill 6, and Senate Bill 7 of the 2009–10 Seventh Extraordinary Session of the Legislature are enacted and become effective.

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