SENATE BILL No. 565

Introduced by Senators Pavley and Steinberg
(Principal coauthor: Assembly Member Huffman)

February 27, 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, 1228.5, 1228.7, 1525, 1535, 1538, 1550, 1551, 1825, 1845, 5103, and 5106 of, and to add Sections 1051.1, 1240.5, 1052.5, 1826, 1846, and 1847 to, the Water Code, relating to water resources.

LEGISLATIVE COUNSEL’S DIGEST

SB 565, as amended, Pavley. 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 (board) for official services relating to statements of water diversion and use.

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

This bill would authorize the board, in conducting an investigation or proceeding for these purposes, to order any person or entity that diverts water or uses water to submit 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 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, as specified, 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.

(4) Existing law, with certain exceptions, requires each person who diverts water after December 31, 1965, to file with the 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 establish a rebuttable presumption, as specified, in any proceeding before the board in which it is alleged that—
appropriate right a right to appropriate water 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.

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

This bill would 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. The board would be required to establish a schedule of penalties that applies to small farms for de minimus water right violations. Funds derived from the imposition of these civil penalties would be deposited in the Water Rights Fund, as specified.

The bill would establish, in a proceeding before the board in which it is alleged that an appropriative water right has ceased, or is subject to prescribed action, a rebuttable presumption that no use occurred on or after January 1, 2010, unless that diversion or use was included in a specified statement submitted to the board within 6 months after the statement is required to be filed with the board, as specified.

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

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

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

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

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

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

1051.1. (a) (1) In conducting any investigation or proceeding specified in Section 275 or 1051, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, the board may order any person or entity that diverts or uses water to prepare and submit to the board any technical or monitoring program reports related to that person’s or entity’s diversion or use of water as the board may specify.

(2) The costs incurred by the person or entity in the preparation of those reports shall bear a reasonable relationship to the need for the report and the benefit to be obtained from the report.

(3) If the preparation of individual reports would result in a duplication of effort, or if the reports are necessary to evaluate the cumulative effect of several diversions or uses of water, the board may order any person or entity subject to this subdivision to pay a reasonable share of the cost of preparing reports.

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

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

(d) In conducting any investigation or proceeding specified in Section 275 or 1051, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, the board may inspect the facilities of any person or entity to ascertain whether the purposes of Section 100 and this division are being met and to ascertain compliance with any permit, license, certification, registration, decision, order, or regulation issued under Section 275, this division, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7. The board shall adopt regulations for procedures pursuant to Article 13 (commencing with Section 11460.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, and any time extensions necessary to implement those regulations. Except in the event of an emergency affecting the public health or safety, the inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure.

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

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

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

(c) (1) Any person or entity committing a trespass as defined in this section may be liable in an amount not to exceed the greater of either of the following amounts:

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

(B) The highest market value of the water subject to the trespass as determined on a regional basis pursuant to Section 1052.5.

(2) The Attorney General, upon request of the board, shall petition the superior court to impose, assess, and recover any sums pursuant to this subdivision. In determining the appropriate amount, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, the corrective action, if any, taken by the violator, and other matters as justice may require.

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

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

(2) Any funds recovered pursuant to this section that exceed the amounts that were authorized before January 1, 2011, shall be deposited in the Water Rights Protection Subaccount in the Water Rights Fund established pursuant to Section 1550.

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

(f) The increase in the amount of penalties that may be imposed pursuant to the amendments made to this section by this act during Senate Bill 565 of the 2009–10 Regular Session of the Legislature does not apply to violations that occurred prior to January 1, 2011.

SEC. 5. Section 1052.5 is added to the Water Code, to read:

1052.5. In establishing the highest market value of water for purposes of Sections 1052 and 1845, the board shall consider the price of water transferred within the watershed where the trespass occurred during a period of one year immediately preceding the first day on which the trespass occurred, or, if there has been no transfer of water within the watershed during that period, the board shall consider the price of water transferred within the watershed in the most recent year in which there has been a transfer. Board consideration shall include only transfers of one year or less in duration.
SEC. 5. 
SEC. 6. 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, Article 4 (commencing with Section 1845) of Chapter 12 of Part 2 of Division 2, or Section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail, and shall inform the party served that the party may request a hearing not later than 20 days from the date the party was served.

The hearing shall be before the board or a member of the board in accordance with Section 183.

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

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

SEC. 6. 
SEC. 7. 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 Section 1052, 1845, or 1846 for the same act or failure to act.

SEC. 7. 
SEC. 8. Section 1055.3 of the Water Code is amended to read:

1055.3. In determining the amount of civil liability, the board 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 with respect to the violator, the ability to pay, the effect on the ability to continue in business, the corrective action, if any, taken by the violator, and other matters as justice may require.

SEC. 8. 
SEC. 9. Section 1120 of the Water Code is amended to read:
1120. This chapter applies to any decision or order issued under
this part or Section 275, Part 2 (commencing with Section 1200),
Part 2 (commencing with Section 10500) of Division 6, Article 7
(commencing with Section 13550) of Chapter 7 of Division 7,
Section 85230, or the public trust doctrine.
SEC. 9.
SEC. 10. Section 1228.5 of the Water Code is amended to read:
1228.5. (a) Registration of a small domestic or livestock
stockpond use pursuant to this article shall be renewed prior to the
expiration of each five-year period following completed
registration.
(b) Renewal of registration shall be made upon a form prescribed
by the board and shall contain such a report of water use made
pursuant to the registration as may be required by the board.
(c) The conditions established by the board pursuant to Section
1228.6 which are in effect at the time of renewal of registration
shall supersede the conditions which were applicable to the
original completed registration.
(d) Failure to renew registration in substantial compliance with
the reporting requirements prescribed by the board within the time
period specified in subdivision (a), or to pay the renewal fee
specified in subdivision (b) of Section 1525, shall result by
operation of law in the revocation of any right acquired pursuant
to this article.
SEC. 11.
SEC. 11. Section 1228.7 of the Water Code is amended to read:
1228.7. (a) Any registrant may change the point of diversion
or place of use by delivering to the board an amended registration
form in accordance with Section 1228.3, including payment of the
registration fee specified in Section 1525, except that the purpose
of the use may not be changed and the change may not operate to
the injury of any legal user of the water involved.
(b) Any completed amended registration of water use continues
in effect the priority of right as of the date of the original completed
registration.
(c) All provisions of this article regarding appropriations made
pursuant thereto, including, but not limited to, provisions regarding
enforcement, are applicable to the appropriation as described in
the completed amended registration, except that the conditions
established by the board pursuant to Section 1228.6 which are in
effect at the time of completion of the amended registration shall
supersede the conditions which were applicable to the original
completed registration.

SEC. 11. Section 1240.5 is added to the Water Code, to read:
1240.5. (a) In any proceeding before the board in which it is
alleged that a right to appropriate water has ceased or is subject to
forfeiture or revocation for nonuse, there shall be a rebuttable
presumption that no use occurred unless that use is included in a
statement submitted pursuant to any reporting or monitoring
requirement established under any permit, license, certificate,
registration, decision or order, or regulation issued by the board
pursuant to this division, Section 275, Article 7 (commencing with
Section 13550) of Division 7, or the public trust doctrine under
this part, and the statement is submitted within six months after it
is required to be filed with the board. This section does not apply
to any diversion or use that occurred before January 1, 2010:
(b) The rebuttable presumption established in subdivision (a)
applies only if the failure to file the statement is shown to be
willful.

SEC. 12. Section 1525 of the Water Code is amended to read:
1525. (a) Each person or entity who holds a permit or license
to appropriate water, and each lessor of water leased under Chapter
1.5 (commencing with Section 1020) of Part 1, shall pay an annual
fee according to a fee schedule established by the board.
(b) Each person or entity who files any of the following shall
pay a fee according to a fee schedule established by the board:
(1) An application for a permit to appropriate water.
(2) A registration of appropriation for a small domestic use or
livestock stockpond use.
(3) A petition for an extension of time within which to begin
construction, to complete construction, or to apply the water to
full beneficial use under a permit.
(4) A petition to change the point of diversion, place of use, or
purpose of use, under a registration for small domestic use or
livestock stockpond use, or under a permit or license.
(5) A petition to change the conditions of a permit or license,
requested by the permittee or licensee, that is not otherwise subject
to paragraph (3) or (4).
(6) A petition under Section 1707 or 1740 to change the point of diversion, place of use, or purpose of use of a water right that is not subject to a permit or license to appropriate water.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1538. (a) In any proceeding pursuant to Section 1052 in which it is determined that there has been a violation of the prohibition against the unauthorized diversion or use of water subject to this division, the board or court, as the case may be, may impose an additional liability in the amount of 150 percent of any annual fees that would have been required under this division if the diversion or use had been authorized by a permit or license to appropriate water.
(b) In any proceeding pursuant to Section 5107 in which the board imposes liability for a failure to file a statement of diversion and use or for a material misstatement in a statement of diversion and use, the board may impose an additional liability in the amount of 150 percent of any fees that have not been paid but would have been required under this division if the statement of diversion and use had been filed and did not make any material misstatement.

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

SEC. 15. Section 1550 of the Water Code is amended to read:
1550. (a) There is in the State Treasury a Water Rights Fund, which is hereby established.

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

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

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

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

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

SEC. 17. 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, to prevent the unlawful diversion of water, and to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, and to enforce reporting and monitoring requirements.
SEC. 18. Section 1826 is added to the Water Code, to read:
1826. The board shall establish a schedule of penalties that applies to small farms for de minimis water right violations under this division.

SEC. 19. 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 in an amount not to exceed the greater of either of the following amounts:
(A) One thousand dollars ($1,000) for each day in which the violation occurs for the first enforcement proceeding or five thousand dollars ($5,000) for each day in which the violation occurs for any subsequent enforcement proceeding.
(B) The highest market value of the water as determined on a regional basis pursuant to Section 1052.5.

(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, with respect to the violator, the ability to pay, the effect on the ability to continue in business, the corrective action, if any, taken by the violator, and other matters as justice may require.

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

(2) Any funds recovered pursuant to this section that exceed the amounts that were authorized before January 1, 2011, shall be deposited in the Water Rights Protection Subaccount in the Water Rights Fund established pursuant to Section 1550.
(e) The increase in the amount of penalties that may be imposed pursuant to the amendments made to this section by this act during Senate Bill 565 of the 2009–10 Regular Session of the Legislature does not apply to violations that occurred prior to January 1, 2011.

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

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

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

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

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

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

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

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

(3) This section does not provide a basis for imposing liability on a watermaster who is subject to reporting or monitoring
requirements but does not divert or use the water subject to those
requirements.
SEC. 21. Section 1847 is added to the Water Code, to read:
1847. (a) Any person or entity who violates any term or
condition of a permit, license, certificate, or registration issued
under this division or any order or regulation adopted by the board
under Section 275 may be liable in an amount not to exceed five
hundred dollars ($500) for each day in which the violation occurs.
(b) Civil liability may be imposed by the superior court. The
Attorney General, upon the request of the board, shall petition the
superior court to impose, assess, and recover those sums.
(c) Civil liability may be imposed administratively by the board
pursuant to Section 1055.
(d) In determining the appropriate amount, the court, or the
board, as the case may be, shall take into consideration all relevant
circumstances, including, but not limited to, the extent of harm
caused by the violation, the nature and persistence of the violation,
the length of time over which the violation occurs, and, with respect
to the violator, the ability to pay, the effect on the ability to
continue in business, the corrective action, if any, taken by the
violator, and other matters as justice may require.
(e) No liability shall be recoverable under this section for any
violation for which liability is recovered under Section 1052 or
1846.
(f) All funds recovered pursuant to this section shall be deposited
in the Water Rights Protection Subaccount in the Water Rights
Fund established pursuant to Section 1550.
SEC. 22. Section 5103 of the Water Code, as amended by
Section 5 of Chapter 2 of the Seventh Extraordinary Session of
the Statutes of 2009, 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. The location of the diversion works
shall be 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 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 by a person who provides to the board documentation demonstrating that the implementation of those practices is not locally cost effective.

(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, or its successor 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) The purpose of use.

(g) A general description of the area in which the water was used. 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.

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

SEC. 23. Section 5106 of the Water Code is amended to read:
5106. (a) Neither the statements submitted under this part nor the determination of facts by the board pursuant to Section 5105 shall establish or constitute evidence of a right to divert or use water.

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

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

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

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

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

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

(2) Paragraph (1) does not apply to any use that occurred before January 1, 2010.

(3) The rebuttable presumption established in paragraph (1) applies only if the failure to file the statement is shown to be willful.
CORRECTIONS:

Text—Page 10.