

AMENDED IN ASSEMBLY AUGUST 2, 2010
AMENDED IN ASSEMBLY MAY 20, 2010
AMENDED IN ASSEMBLY FEBRUARY 1, 2010
AMENDED IN SENATE JUNE 2, 2009
AMENDED IN SENATE MAY 4, 2009
AMENDED IN SENATE APRIL 13, 2009

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, 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~~ a technical or monitoring report related to the diversion or use of water by that person or entity, *if the report is in that person's or entity's possession or control, and would authorize the board to require specified persons and entities to prepare and submit technical and monitoring reports.* The bill would authorize the board, in connection with the investigation or proceeding, *and with the consent of the owner or possessor of the facilities or pursuant to a warrant,* 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, *for a first enforcement proceeding,* a person or entity committing a trespass may be liable *either* in an amount not to exceed the sum of \$1,000 ~~or~~ *for each day in which the trespass occurs, if the unauthorized diversion or use does not exceed 1,000 acre feet per day, or, if the unauthorized diversion or use exceeds 1,000 acre feet per day, in an amount not to exceed the sum of either \$1,000 for each day in which the trespass occurs or the highest market value of the water, as specified, whichever is the greater amount.* For a subsequent enforcement proceeding, the bill would provide that the person or entity committing the trespass may be liable in an amount not to exceed either \$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 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 certain statements submitted to the board, that are canceled for nonpayment of fees, to be deemed submitted for purposes of that presumption.*

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 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. 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 minimis water right violations. Funds derived from the imposition of these civil penalties would be deposited in the Water Rights Fund, as specified.

Vote: majority. Appropriation: no. 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 Part 1 (commencing with Section
5 1000), Part 2 (commencing with Section 1200), Part 3
6 (commencing with Section 2000), Part 4 (commencing with Section
7 4000), Part 5 (commencing with Section 4999), or Part 5.1
8 (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~~ 100860.1 of the Health
15 and Safety Code.

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

17 1051.1. (a) (1) In conducting any investigation or proceeding
18 specified in Section 275 or 1051, or Article 7 (commencing with
19 Section 13550) of Chapter 7 of Division 7, the board may order
20 any person or entity that diverts or uses water to ~~prepare and~~ submit
21 to the board ~~any~~ technical or monitoring program reports related
22 to that person's or entity's diversion or use of water ~~as the board~~
23 ~~may specify~~, *if the technical or monitoring program reports are*
24 *within that person's or entity's possession or control. Except as*
25 *provided in paragraph (2), the board shall not require a person*
26 *or entity to prepare any new report for purposes of this section.*

27 (2) *The board may order a person or entity that diverts 200 or*
28 *more acre feet of water per year to prepare and submit technical*

1 *or monitoring program reports related to that person's or entity's*
 2 *diversion or use of water, as the board may specify, for purposes*
 3 *of paragraph (1). If the preparation of a technical or monitoring*
 4 *program report would create a material financial hardship, the*
 5 *person or entity may request the board to revise its order to avoid*
 6 *the material financial hardship.*

7 ~~(2)~~

8 (3) The costs incurred by the person or entity in the preparation
 9 of reports required pursuant to this subdivision shall bear a
 10 reasonable relationship to the need for the report and the benefit
 11 to be obtained from the report.

12 ~~(3)~~

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

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

28 (c) Upon application of any person or entity or upon its own
 29 motion, the board may review and revise any order *requiring*
 30 *technical or monitoring program reports* issued pursuant to this
 31 section, in accordance with the procedures set forth in subdivision
 32 (b).

33 (d) In conducting any investigation or proceeding specified in
 34 Section 275 or 1051, or Article 7 (commencing with Section
 35 13550) of Chapter 7 of Division 7, the board, *with the consent of*
 36 *the owner or possessor of the facilities or, if the consent is withheld,*
 37 *with a warrant duly issued pursuant to the procedure set forth in*
 38 *Title 13 (commencing with Section 1822.50) of Part 3 of the Code*
 39 *of Civil Procedure*, may inspect the facilities of any person or
 40 entity to ascertain whether the purposes of Section 100 and this

1 division are being met and to ascertain compliance with any permit,
2 license, certification, registration, decision, order, or regulation
3 issued under Section 275, this division, or Article 7 (commencing
4 with Section 13550) of Chapter 7 of Division 7. The board shall
5 adopt regulations for procedures pursuant to Article 13
6 (commencing with Section 11460.10) of Chapter 4.5 of Part 1 of
7 Division 3 of Title 2 of the Government Code, and any time
8 extensions necessary to implement those regulations. ~~Except in~~
9 ~~the event of an emergency affecting the public health or safety,~~
10 ~~the inspection shall be made with the consent of the owner or~~
11 ~~possessor of the facilities or, if the consent is withheld, with a~~
12 ~~warrant duly issued pursuant to the procedure set forth in Title 13~~
13 ~~(commencing with Section 1822.50) of Part 3 of the Code of Civil~~
14 ~~Procedure.~~

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

16 1052. (a) The diversion or use of water subject to this division
17 other than as authorized in this division is a trespass.

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

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

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

31 *(A) For a first enforcement proceeding, if the unauthorized*
32 *diversion or use of water does not exceed 1,000 acre feet per day*
33 *on any day in which the trespass occurs, one thousand dollars*
34 *(\$1,000) for each day in which the trespass occurs.*

35 *(B) For a first enforcement proceeding, if the unauthorized*
36 *diversion or use of water exceeds 1,000 acre feet per day on any*
37 *day in which the trespass occurs, the greater of either of the*
38 *following amounts:*

39 *(i) One thousand dollars (\$1,000) for each day in which the*
40 *trespass occurs.*

1 (ii) *The highest market value of the water subject to the trespass*
2 *as determined pursuant to Section 1052.5.*

3 (C) *For any subsequent enforcement proceeding, the greater*
4 *of either of the following amounts:*

5 (i) *Five thousand dollars (\$5,000) for each day in which the*
6 *trespass occurs.*

7 ~~(B)~~

8 (ii) *The highest market value of the water subject to the trespass*
9 *as determined pursuant to Section 1052.5.*

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

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

22 (d) ~~(4)~~ All funds recovered pursuant to this section shall be
23 deposited in the Water Rights Fund established pursuant to Section
24 1550.

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

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

31 (f) The increase in the amount of penalties that may be imposed
32 pursuant to the amendments made to this section by Senate Bill
33 565 of the 2009–10 Regular Session of the Legislature does not
34 apply to violations that occurred prior to January 1, 2011.

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

36 1052.5. In establishing the highest market value of water for
37 purposes of Sections 1052 and 1845, the board shall consider ~~the~~
38 ~~price of water transferred~~ *price, per acre foot, of water transferred*
39 ~~or exchanged~~ within the watershed where the trespass occurred
40 during a period of one year immediately preceding the first day

1 on which the trespass occurred, or, if there has been no transfer or
2 *exchange* of water within the watershed during that period, the
3 board shall consider the ~~price of water transferred~~ *price, per acre*
4 *foot, of water transferred or exchanged* within the watershed in
5 the most recent year in which there has been a transfer or *exchange*.
6 ~~Board consideration shall include only transfers of one year or less~~
7 ~~in duration.~~ *For purposes of this section, the board shall consider*
8 *only the price, per acre foot, of water or water rights transferred*
9 *or exchanged for a period of one year or less. The one-year period*
10 *shall not include any time required for monitoring, reporting, or*
11 *mitigation before or after the transfer or exchange is made.*

12 SEC. 6. Section 1055 of the Water Code is amended to read:

13 1055. (a) The executive director of the board may issue a
14 complaint to any person or entity on which administrative civil
15 liability may be imposed pursuant to Section 1052, Article 4
16 (commencing with Section 1845) of Chapter 12 of Part 2 of
17 Division 2, or Section 5107. The complaint shall allege the act or
18 failure to act that constitutes a trespass or violation, the provision
19 of law authorizing civil liability to be imposed, and the proposed
20 civil liability.

21 (b) The complaint shall be served by personal notice or certified
22 mail, and shall inform the party served that the party may request
23 a hearing not later than 20 days from the date the party was served.
24 The hearing shall be before the board or a member of the board in
25 accordance with Section 183.

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

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

32 SEC. 7. Section 1055.2 of the Water Code is amended to read:

33 1055.2. A person or entity shall not be subject to both civil
34 liability imposed under Section 1055 and civil liability imposed
35 by the superior court under Section 1052, 1845, or 1846 for the
36 same act or failure to act.

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

38 1055.3. In determining the amount of civil liability, the board
39 shall take into consideration all relevant circumstances, including,
40 but not limited to, the extent of harm caused by the violation, the

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

6 SEC. 9. Section 1120 of the Water Code is amended to read:

7 1120. This chapter applies to any decision or order issued under
8 this part or Section 275, Part 2 (commencing with Section 1200),
9 Part 2 (commencing with Section 10500) of Division 6, Article 7
10 (commencing with Section 13550) of Chapter 7 of Division 7,
11 Section 85230, or the public trust doctrine.

12 SEC. 10. Section 1228.5 of the Water Code is amended to read:

13 1228.5. (a) Registration of a small domestic or livestock
14 stockpond use pursuant to this article shall be renewed prior to the
15 expiration of each five-year period following completed
16 registration.

17 (b) Renewal of registration shall be made upon a form prescribed
18 by the board and shall contain a report of water use made pursuant
19 to the registration as may be required by the board.

20 (c) The conditions established by the board pursuant to Section
21 1228.6 that are in effect at the time of renewal of registration shall
22 supersede the conditions that were applicable to the original
23 completed registration.

24 (d) Failure to renew registration in substantial compliance with
25 the reporting requirements prescribed by the board within the time
26 period specified in subdivision (a), or to pay the renewal fee
27 specified in subdivision (b) of Section 1525, shall result by
28 operation of law in the revocation of any right acquired pursuant
29 to this article.

30 SEC. 11. Section 1228.7 of the Water Code is amended to read:

31 1228.7. (a) Any registrant may change the point of diversion
32 or place of use by delivering to the board an amended registration
33 form in accordance with Section 1228.3, including payment of the
34 registration fee specified in Section 1525, except that the purpose
35 of the use may not be changed and the change may not operate to
36 the injury of any legal user of the water involved.

37 (b) Any completed amended registration of water use continues
38 in effect the priority of right as of the date of the original completed
39 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. 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).

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 Section 275, the prohibition set forth in
18 Section 1052 against the unauthorized diversion or use of water
19 subject to this division, the requirements under Part 5.1
20 (commencing with Section 5100) for filing statements of diversion
21 and use, and the administrative costs incurred in connection with
22 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 to
6 water appropriated prior to December 19, 1914, pursuant to this
7 chapter shall bear a fair or reasonable relationship to the payor's
8 burden on, or benefits from, the board's water rights program
9 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, and conservancies.~~

10 ~~SEC. 16.~~

11 ~~SEC. 15.~~ 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, 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.~~

23 ~~SEC. 16.~~ Section 1825 of the Water Code is amended to read:

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

31 ~~SEC. 18.~~

32 ~~SEC. 17.~~ Section 1826 is added to the Water Code, to read:

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

36 ~~SEC. 19.~~

37 ~~SEC. 18.~~ Section 1845 of the Water Code is amended to read:

38 ~~1845. (a) Upon the failure of any person to comply with a~~
39 ~~cease and desist order issued by the board pursuant to this chapter,~~
40 ~~the Attorney General, upon the request of the board, shall petition~~

1 the superior court for the issuance of prohibitory or mandatory
2 injunctive relief as appropriate, including a temporary restraining
3 order, preliminary injunction, or permanent injunction.

4 (b) (1) Any person or entity who violates a cease and desist
5 order issued pursuant to this chapter may be liable in an amount
6 not to exceed the greater of either of the following amounts:

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

11 *(A) For a first enforcement proceeding, if the violation of a*
12 *cease and desist order does not involve an unauthorized diversion*
13 *or use of water exceeding 1,000 acre feet per day on any day in*
14 *which the violation occurs, one thousand dollars (\$1,000) for each*
15 *day in which the violation occurs.*

16 *(B) For a first enforcement proceeding, if the violation of a*
17 *cease and desist order involves an unauthorized diversion or use*
18 *of water exceeding 1,000 acre feet per day on any day in which*
19 *the violation occurs, the greater of either of the following amounts:*

20 *(i) One thousand dollars (\$1,000) for each day in which the*
21 *violation occurs.*

22 *(ii) The highest market value of the water subject to the violation*
23 *as determined pursuant to Section 1052.5.*

24 *(C) For any subsequent enforcement proceeding, the greater*
25 *of either of the following amounts:*

26 *(i) Five thousand dollars (\$5,000) for each day in which the*
27 *violation occurs.*

28 ~~(B)~~

29 *(ii) The highest market value of the water subject to the violation*
30 *as determined pursuant to Section 1052.5.*

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

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

36 (c) In determining the appropriate amount, the court, or the
37 board, as the case may be, shall take into consideration all relevant
38 circumstances, including, but not limited to, the extent of harm
39 caused by the violation, the nature and persistence of the violation,
40 the length of time over which the violation occurs, and, with respect

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

4 (d) ~~(4)~~ All funds recovered pursuant to this section shall be
5 deposited in the Water Rights Fund established pursuant to Section
6 1550.

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

11 (e) The increase in the amount of penalties that may be imposed
12 pursuant to the amendments made to this section by Senate Bill
13 565 of the 2009–10 Regular Session of the Legislature does not
14 apply to violations that occurred prior to January 1, 2011.

15 ~~SEC. 20.~~

16 *SEC. 19.* Section 1846 is added to the Water Code, to read:

17 1846. (a) Any person or entity subject to a monitoring or
18 reporting requirement specified in subdivision (f) who violates
19 that reporting or monitoring requirement, makes a material
20 misstatement in any record or report submitted under that reporting
21 or monitoring requirement, or tampers with or renders inaccurate
22 any monitoring device required under that reporting or monitoring
23 requirement shall be liable for a sum not to exceed five hundred
24 dollars (\$500) for each day in which the violation occurs.

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

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

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

38 (e) All funds recovered pursuant to this section shall be
39 deposited in the ~~Water Rights Protection Subaccount in the Water~~
40 ~~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.

(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.~~

SEC. 20. 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.~~

SEC. 21. Section 5103 of the Water Code is amended to read:

1 5103. Each statement shall be prepared on a form provided by
2 the board. The statement shall include all of the following
3 information:

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

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

9 (c) The place of diversion. The location of the diversion works
10 shall be depicted on a specific United States Geological Survey
11 topographic map, or shall be identified using the California
12 Coordinate System, or latitude and longitude measurements. If
13 assigned, the public land description to the nearest 40-acre
14 subdivision and the assessor's parcel number shall also be provided.

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

18 (e) (1) On and after January 1, 2012, monthly records of water
19 diversions. The measurements of the diversion shall be made using
20 best available technologies and best professional practices. Nothing
21 in this paragraph shall be construed to require the implementation
22 of technologies or practices by a person who provides to the board
23 documentation demonstrating that the implementation of those
24 practices is not locally cost effective.

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

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

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

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

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

1 (f) The purpose of use.

2 (g) A general description of the area in which the water was
3 used. The location of the place of use shall be depicted on a specific
4 United States Geological Survey topographic map and on any other
5 maps with identifiable landmarks. If assigned, the public land
6 description to the nearest 40-acre subdivision and the assessor's
7 parcel number shall also be provided.

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

10 ~~SEC. 23.~~

11 *SEC. 22.* Section 5106 of the Water Code is amended to read:

12 5106. (a) Neither the statements submitted under this part nor
13 the determination of facts by the board pursuant to Section 5105
14 shall establish or constitute evidence of a right to divert or use
15 water.

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

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

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

28 (4) This subdivision does not affect the requirement in Section
29 2527 to provide notice to all persons who own land that appears
30 to be riparian to the stream system.

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

36 (d) (1) In any proceeding before the board in which it is alleged
37 that a right to appropriate water has ceased or is subject to forfeiture
38 for nonuse, there shall be a rebuttable presumption that no use
39 required to be included in a statement submitted under this part
40 occurred unless that use is included in a statement submitted under

1 this part and that the statement is submitted within six months after
2 it is required to be filed with the board. *For purposes of this*
3 *paragraph, a use that is included in a statement that is canceled*
4 *pursuant to subdivision (b) of Section 1535 shall be deemed*
5 *submitted.*

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