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AMENDED IN SENATE AUGUST 24, 2012

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AMENDED IN ASSEMBLY MAY 19, 2011

AMENDED IN ASSEMBLY APRIL 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 403

Introduced by Assembly Member Alejo

February 14, 2011

An act to amend Section 13350 of the Water Code, relating to water quality, ~~and to make an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 403, as amended, Alejo. Water quality: integrated plan: Salinas Valley.

Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act (state act). The state act imposes various penalties for a violation of its requirements. The state act requires specified penalties be deposited into the Waste Discharge Permit Fund and separately accounted. The state act requires moneys in the fund, upon appropriation by the Legislature, to be expended by the state board to assist regional boards and prescribed other public agencies in cleaning up or abating the effects of waste on

waters of the state or to assist a regional board attempting to remedy a significant unforeseen water pollution problem.

This bill would appropriate \$2,000,000 to the state board for use by the Greater Monterey County Regional Water Management Group (management group) to develop an integrated plan to address the drinking water and wastewater needs of disadvantaged communities in the Salinas Valley whose waters have been affected by waste discharges, thereby making an appropriation. The bill would require the management group to consult with specified entities and to submit to the Legislature by January 1, 2016, the plan developed by the group.

The bill would make specified findings and declarations that the special legislation contained in the act is necessarily applicable only to Monterey County.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 13350 of the Water Code is amended to
2 read:

3 13350. (a) A person who (1) violates a cease and desist order
4 or cleanup and abatement order hereafter issued, reissued, or
5 amended by a regional board or the state board, or (2) in violation
6 of a waste discharge requirement, waiver condition, certification,
7 or other order or prohibition issued, reissued, or amended by a
8 regional board or the state board, discharges waste, or causes or
9 permits waste to be deposited where it is discharged, into the waters
10 of the state, or (3) causes or permits any oil or any residuary
11 product of petroleum to be deposited in or on any of the waters of
12 the state, except in accordance with waste discharge requirements
13 or other actions or provisions of this division, shall be liable civilly,
14 and remedies may be proposed, in accordance with subdivision
15 (d) or (e).

16 (b) (1) A person who, without regard to intent or negligence,
17 causes or permits a hazardous substance to be discharged in or on
18 any of the waters of the state, except in accordance with waste
19 discharge requirements or other provisions of this division, shall
20 be strictly liable civilly in accordance with subdivision (d) or (e).

(2) For purposes of this subdivision, the term “discharge” includes only those discharges for which Section 13260 directs that a report of waste discharge shall be filed with the regional board.

(3) For purposes of this subdivision, the term “discharge” does not include an emission excluded from the applicability of Section 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to Environmental Protection Agency regulations interpreting Section 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

(c) A person shall not be liable under subdivision (b) if the discharge is caused solely by any one or combination of the following:

(1) An act of war.

(2) An unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(3) Negligence on the part of the state, the United States, or any department or agency thereof. However, this paragraph shall not be interpreted to provide the state, the United States, or any department or agency thereof a defense to liability for any discharge caused by its own negligence.

(4) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(5) Any other circumstance or event that causes the discharge despite the exercise of every reasonable precaution to prevent or mitigate the discharge.

(d) The court may impose civil liability either on a daily basis or on a per gallon basis, but not on both.

(1) The civil liability on a daily basis shall not exceed fifteen thousand dollars (\$15,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis shall not exceed twenty dollars (\$20) for each gallon of waste discharged.

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both.

(1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.

1 (A) When there is a discharge, and a cleanup and abatement
2 order is issued, except as provided in subdivision (f), the civil
3 liability shall not be less than five hundred dollars (\$500) for each
4 day in which the discharge occurs and for each day the cleanup
5 and abatement order is violated.

6 (B) When there is no discharge, but an order issued by the
7 regional board is violated, except as provided in subdivision (f),
8 the civil liability shall not be less than one hundred dollars (\$100)
9 for each day in which the violation occurs.

10 (2) The civil liability on a per gallon basis shall not exceed ten
11 dollars (\$10) for each gallon of waste discharged.

12 (f) A regional board shall not administratively impose civil
13 liability in accordance with paragraph (1) of subdivision (e) in an
14 amount less than the minimum amount specified, unless the
15 regional board makes express findings setting forth the reasons
16 for its action based upon the specific factors required to be
17 considered pursuant to Section 13327.

18 (g) The Attorney General, upon request of a regional board or
19 the state board, shall petition the superior court to impose, assess,
20 and recover the sums. Except in the case of a violation of a cease
21 and desist order, a regional board or the state board shall make the
22 request only after a hearing, with due notice of the hearing given
23 to all affected persons. In determining the amount to be imposed,
24 assessed, or recovered, the court shall be subject to Section 13351.

25 (h) Article 3 (commencing with Section 13330) and Article 6
26 (commencing with Section 13360) apply to proceedings to impose,
27 assess, and recover an amount pursuant to this article.

28 (i) A person who incurs any liability established under this
29 section shall be entitled to contribution for that liability from a
30 third party, in an action in the superior court and upon proof that
31 the discharge was caused in whole or in part by an act or omission
32 of the third party, to the extent that the discharge is caused by the
33 act or omission of the third party, in accordance with the principles
34 of comparative fault.

35 (j) Remedies under this section are in addition to, and do not
36 supersede or limit, any and all other remedies, civil or criminal,
37 except that no liability shall be recoverable under subdivision (b)
38 for any discharge for which liability is recovered under Section
39 13385.

1 (k) Notwithstanding any other law, all funds generated by the
2 imposition of liabilities pursuant to this section shall be deposited
3 into the Waste Discharge Permit Fund. These moneys shall be
4 separately accounted for, and shall be expended by the state board,
5 upon appropriation by the Legislature, to assist regional boards,
6 and other public agencies with authority to clean up waste or abate
7 the effects of the waste, in cleaning up or abating the effects of the
8 waste on waters of the state, or for the purposes authorized in
9 Section 13443, or to assist in implementing Chapter 7.3
10 (commencing with Section 13560).

11 (l) (1) The Legislature hereby appropriates to the state board
12 two million dollars (\$2,000,000) from the moneys deposited into,
13 and separately accounted for in, the Waste Discharge Permit Fund
14 pursuant to subdivision (c) of Section 13264, subdivision (f) of
15 Section 13268, subdivision ~~(f)~~ (k) of this section, and subdivision
16 (n) of Section 13385 for use by the Greater Monterey County
17 Regional Water Management Group to develop an integrated plan
18 to address the drinking water and wastewater needs of
19 disadvantaged communities in the Salinas Valley whose waters
20 have been affected by waste discharges.

21 (2) Funds appropriated pursuant to subparagraph (1) shall be
22 available for assessment and feasibility studies necessary to develop
23 the plan.

24 (3) The Greater Monterey County Regional Water Management
25 Group shall develop the plan in consultation with appropriate
26 stakeholders, including the state board, the State Department of
27 Public Health, and representatives of disadvantaged communities.

28 (4) The plan shall include identification of disadvantaged
29 communities without safe drinking water and recommendations
30 for planning, infrastructure, and other water management actions
31 that achieve affordable, sustainable solutions for disadvantaged
32 communities, including communities without public water systems.

33 (5) On or before January 1, 2016, the Greater Monterey County
34 Regional Water Management Group shall submit to the Legislature
35 the plan developed pursuant to this subdivision.

36 (6) (A) The requirement for submitting a plan imposed under
37 paragraph (5) is inoperative on January 1, 2020, pursuant to Section
38 10231.5 of the Government Code.

1 (B) A plan to be submitted pursuant to paragraph (5) shall be
2 submitted in compliance with Section 9795 of the Government
3 Code.

4 SEC. 2. The Legislature finds and declares that a special law
5 is necessary and that a general law cannot be made applicable
6 within the meaning of Section 16 of Article IV of the California
7 Constitution because of the unique needs for water faced by
8 disadvantaged communities in the Salinas Valley whose waters
9 have been affected by waste discharges.

10 SEC. 3. *This act is an urgency statute necessary for the*
11 *immediate preservation of the public peace, health, or safety within*
12 *the meaning of Article IV of the Constitution and shall go into*
13 *immediate effect. The facts constituting the necessity are:*

14 *In order to provide funds to develop the integrated plan to*
15 *address the drinking water and wastewater needs of disadvantaged*
16 *communities in the Salinas Valley at the earliest possible moment,*
17 *it is necessary that this act take effect immediately.*