

Assembly Bill No. 964

CHAPTER 579

An act to amend Sections 1228.1, 1228.2, 1228.5, 1229.1, 1241, 1525, and 5101 of, to amend the heading of Article 2.7 (commencing with Section 1228) of Chapter 1 of Part 2 of Division 2 of, to add Section 1229 to, and to repeal Section 1228.9 of, the Water Code, relating to water.

[Approved by Governor October 8, 2011. Filed with
Secretary of State October 8, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 964, Huffman. Water rights: appropriation.

(1) Existing law authorizes any person to obtain a right to appropriate water for small domestic use or livestock stockpond use upon registering the use with the State Water Resources Control Board and upon thereafter applying the water to reasonable and beneficial use with due diligence. For these purposes, existing law defines a small domestic use as a domestic use, as defined by board rule, including impoundment for incidental aesthetic, recreational, or fish and wildlife purposes, not to exceed direct diversion of 4,500 gallons per day or diversion to storage of 10 acre-feet per annum. With regard to small domestic use, existing law prohibits more than one registration from being in effect at any time for any facility. Existing law allows a registrant to maintain more than one registration for livestock stockpond use if stockponds subject to registration do not exceed the ratio of one per 50 acres. Existing law provides for registration renewals of small domestic uses and livestock stockpond uses prior to the expiration of each 5-year period following completed registration. Existing law requires the board to establish reasonable general conditions applicable to appropriations for small domestic use or livestock stockpond use, and specifies minimum conditions for those appropriations.

This bill would also authorize any person to obtain a right to appropriate water for a small irrigation use, as defined by the bill, upon registering the use with the board, as prescribed, and thereafter applying the water to reasonable and beneficial use with due diligence. The bill would provide that the board is not required to adopt general conditions applicable to appropriations for small irrigation use until the board determines that funds are available for that purpose. The authority to register for small irrigation use would be effective only to the extent that the board has established the general conditions for the applicable category of small irrigation use. The bill would require the board, prior to adopting other general conditions for small irrigation use, and no later than June 30, 2012, to adopt general conditions for small irrigation use for facilities used for frost protection with

respect to specified coastal streams, unless the board determines that sufficient funds are not available for that purpose.

This bill would redefine small domestic use to mean a domestic use, as defined by board rule, or use for aesthetic, fire protection, recreational, or fish and wildlife purposes, not to exceed direct diversion of 4,500 gallons per day or diversion to storage of 10 acre-feet per annum. The bill would prohibit the filing of a small domestic use registration for a facility served by or used pursuant to a permit or license for domestic or municipal use. This bill would also allow a registrant for a small irrigation use to maintain more than one registration if a small irrigation use subject to registration does not exceed the ratio of one per 20 irrigated acres, and if the total water use on all registered acreage does not exceed 100 acre-feet per annum.

This bill would also prohibit a registration with a source of supply on a stream system from taking effect unless the board finds that unappropriated water is available for the proposed appropriation. The bill would authorize the board, following a notice and hearing, to determine whether that stream system should be declared fully appropriated.

The bill would make various conforming changes relating to registrations for small irrigation use.

(2) Existing law exempts from the provisions described in (1) those stream segments for which the Director of Fish and Game establishes proposed streamflow requirements pursuant to specified existing law.

This bill would provide that the exemption does not apply to a registration filed before the director establishes proposed streamflow requirements. The bill would require the renewal of a registration to include certain conditions determined by the department to be necessary.

(3) Existing law requires a person who holds a permit or license to appropriate water, leases water pursuant to specified provisions of law, or files a specified application, registration, petition, or request relating to water use to pay fees imposed by the board. The board is required to adopt a fee schedule so that the total amount of fees collected 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, and orders approving changes in points of discharge, place of use, or purpose of use of treated wastewater. The board is required to set the amount of total revenue collected each year through the fees at an amount equal to the revenue levels set forth in the annual Budget Act for this activity. The revenue generated by those fees is required to be deposited in the Water Rights Fund.

This bill would instead require the board to set the total revenue collected each year through the fees at an amount equal to amounts appropriated from the Water Rights Fund by the Legislature for water rights program activities, as specified. The bill would additionally apply the fee requirements to a registration of appropriation for small irrigation use.

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

SECTION 1. The heading of Article 2.7 (commencing with Section 1228) of Chapter 1 of Part 2 of Division 2 of the Water Code is amended to read:

Article 2.7. Registration of Appropriations for Small Domestic, Small Irrigation, and Livestock Stockpond Uses

SEC. 2. Section 1228.1 of the Water Code is amended to read:

1228.1. (a) The Legislature finds and declares that it is in the public interest to provide a timely, efficient, and economic procedure for the acquisition of rights to appropriate water for a small domestic use, including incidental stock watering and irrigation uses, a small irrigation use, and for a livestock stockpond subject to prior rights.

(b) As used in this article:

(1) "Small domestic use" means a domestic use, as that use is defined by board rule, or a use for aesthetic, fire protection, recreational, or fish and wildlife purposes that is associated with a dwelling or other facility for human occupation, that does not exceed direct diversion of 4,500 gallons per day or diversion to storage of 10 acre-feet per annum.

(2) "Small irrigation use" means either of the following:

(A) An irrigation use, heat control use, or frost protection use, not to exceed diversion to storage of 20 acre-feet per annum, including impoundment for incidental aesthetic, fire protection, recreational, or fish and wildlife purposes.

(B) An irrigation use not to exceed direct diversion of 42,000 gallons per day, up to a maximum of 20 acre-feet per annum.

(3) "Livestock stockpond" means a water impoundment structure constructed for livestock watering use not to exceed direct diversion of 4,500 gallons per day, or diversion to storage of 10 acre-feet per year, as that use is defined by the board, and including impoundment for incidental aesthetic, recreational, or fish and wildlife purposes.

SEC. 3. Section 1228.2 of the Water Code is amended to read:

1228.2. (a) (1) Subject to subdivision (b), any person may obtain a right to appropriate water for a small domestic, small irrigation, or livestock stockpond use upon first registering the use with the board and thereafter applying the water to reasonable and beneficial use with due diligence.

(2) With regard to an appropriation for small domestic use, a registration shall not be filed for a facility served by or used pursuant to a permit or license for domestic or municipal use, and not more than one small domestic use registration shall be in effect at any time for any facility.

(3) With regard to an appropriation for small irrigation use, more than one registration may be in effect at any time for a registrant if the diversion or storage facilities subject to registration for a registrant do not exceed the ratio of one per 20 irrigated acres, and if the total water use on all acreage

covered by the registrations, including any water use based on other rights, does not exceed 100 acre-feet per annum.

(4) A small domestic use registration and a small irrigation use registration may be in effect for the same facility only if the total combined water use covered by the registrations does not exceed 20 acre-feet per annum.

(5) With regard to an appropriation for livestock stockpond use, more than one registration may be in effect at any time for a registrant if stockponds subject to registration for that registrant do not exceed the ratio of one per 50 acres.

(b) Initiation of rights to appropriate water pursuant to this article shall be subject to Article 1.3 (commencing with Section 1205), relating to fully appropriated stream systems. The board shall not accept any registration of water use which proposes as a source of water supply any stream system which has been unconditionally declared by the board to be fully appropriated pursuant to Section 1205, except that subdivision (b) of Section 1206, relating to conditional declarations of fully appropriated stream systems, shall apply to registration of water use pursuant to this article, and the board shall accept those registrations where consistent with the conditions specified in any such declaration.

(c) On or before June 30, 1989, and annually thereafter, the Division of Water Rights shall prepare and submit to the board a report summarizing the location, nature, and amount of water appropriated pursuant to this article. The report shall include a description of the availability of unappropriated water in those stream systems which may become fully appropriated within the next reporting period.

(d) If a registration is filed with a source of supply on a stream system that the most recent report submitted under subdivision (c) identifies as a stream system that may become fully appropriated within the next reporting period, the registration shall not take effect unless the board finds that unappropriated water is available for the appropriation proposed by the registration. If the board finds that unappropriated water is not available to supply the proposed appropriation, the board shall, following notice and hearing, determine whether that stream system should be declared fully appropriated pursuant to Article 1.3 (commencing with Section 1205).

SEC. 4. Section 1228.5 of the Water Code is amended to read:

1228.5. (a) Registration of a small domestic, small irrigation, 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 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 that are in effect at the time of renewal of registration shall supersede the conditions that 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 Section 1525, shall result by operation of law in the revocation of any right acquired pursuant to this article.

SEC. 5. Section 1228.9 of the Water Code is repealed.

SEC. 6. Section 1229 is added to the Water Code, to read:

1229. (a) The board is not required to adopt general conditions for small irrigation use pursuant to subdivision (a) of Section 1228.6 until the board determines that funds are available for that purpose.

(b) A registration for small irrigation use pursuant to this article is not authorized until the board establishes general conditions for small irrigation use pursuant to subdivision (a) of Section 1228.6 to protect instream beneficial uses.

(c) The board may establish general conditions for some methods of diversion or categories of small irrigation use before establishing general conditions for other methods or categories, in which case a registration for small irrigation use is authorized only for those methods or categories for which the board has established the general conditions for the protection of instream beneficial uses.

(d) The board, prior to adopting other general conditions for small irrigation use, and no later than June 30, 2012, shall adopt general conditions for registration of small irrigation use for facilities used for frost protection in the area described in paragraph (1) of subdivision (a) of Section 1259.4, unless the board determines that sufficient funds are not available for that purpose.

SEC. 7. Section 1229.1 of the Water Code is amended to read:

1229.1. (a) This article does not apply to those stream segments for which the Director of Fish and Game establishes proposed streamflow requirements pursuant to Section 10002 of the Public Resources Code, notwithstanding the July 1, 1989, deadline for preparation of the requirements.

(b) Notwithstanding subdivision (a), this article applies to any registration filed before the Director of Fish and Game establishes proposed streamflow requirements for the source of water supply for the registration. The conditions for renewal under subdivision (c) of Section 1228.5 may include any conditions the Department of Fish and Game determines to be necessary to protect stream-related fish and wildlife resources on any source of water supply for which the Director of Fish and Game has established proposed streamflow requirements pursuant to Section 10002 of the Public Resources Code.

SEC. 8. Section 1241 of the Water Code is amended to read:

1241. If the person entitled to the use of water fails to use beneficially all or any part of the water claimed by him or her, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, for a period of five years, that unused water may revert to the public and shall, if reverted, be regarded as unappropriated public water. That reversion shall occur upon a finding by the board following notice to the permittee, licensee, or person holding a livestock stockpond certificate or small

domestic use, small irrigation use, or livestock stockpond use registration under this part and a public hearing if requested by the permittee, licensee, certificate holder, or registration holder.

SEC. 9. 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, small irrigation 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 permit, license, or registration.

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

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

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

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

(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, 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, 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 prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division, 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 amounts appropriated by the Legislature for expenditure for support of water rights program activities from the Water Rights Fund established under Section 1550, taking into account the reserves in the Water Rights Fund. The board shall review and revise the fees each fiscal year as necessary to conform with the amounts appropriated. If the board determines that the revenue collected during the preceding year was greater than, or less than, the amounts appropriated, 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.

SEC. 10. Section 5101 of the Water Code is amended to read:

5101. Each person who, after December 31, 1965, diverts water shall file with the board, prior to July 1 of the succeeding year, a statement of his or her diversion and use, except that a statement is not required to be filed if the diversion is any of the following:

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

(b) Covered by a registration for small domestic use, small irrigation use, or livestock stockpond use, or permit or license to appropriate water on file with the board.

(c) Included in a notice filed pursuant to Part 5 (commencing with Section 4999).

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

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

(f) For use in compliance with Article 2.5 (commencing with Section 1226) or Article 2.7 (commencing with Section 1228) of Chapter 1 of Part 2.

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

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

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

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

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