

AMENDED IN SENATE APRIL 11, 2013

SENATE BILL

No. 658

**Introduced by Senator Correa
(Coauthor: Senator Wyland)**

(Coauthors: Assembly Members Hagman, Harkey, Mansoor, and
Wagner)

February 22, 2013

An act to amend ~~Section 13304 of the Water Code~~ *Section 8 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933)*, relating to water quality, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 658, as amended, Correa. ~~Water quality: cleanup and abatement orders.~~ *Orange County Water District Act: investigation, cleanup, and liability.*

Existing law, the Municipal Water District Law of 1911, authorizes the formation of a municipal water district to acquire and sell water, and specifies the powers and purposes of a municipal water district. The Municipal Water District of Orange County is a district established pursuant to that law.

The Orange County Water District Act establishes the Orange County Water District, consisting of specified lands in the County of Orange, including the Cities of Anaheim, Fullerton, and Santa Ana. The act authorizes the district to investigate the quality of the surface and groundwaters within the district to determine whether the waters are contaminated or polluted and authorizes the district to expend funds to perform any cleanup, abatement, or remedial work to prevent, abate, or contain the contamination of, or pollution to, the surface or

groundwaters of the district. The act requires the person causing or threatening to cause the contamination or pollution to be liable to the district for reasonable costs actually incurred in cleaning up or containing the contamination or pollution, abating the effects of the contamination or pollution, or taking other remedial action.

This bill would require the person also to be liable for the costs actually incurred in investigating the contamination or pollution. The bill would provide that these remedies are in addition to all other legal and equitable remedies available to the water district, including declaratory relief.

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

~~The Porter-Cologne Water Quality Control Act requires a person who discharges waste into the waters of the state in violation of waste discharge requirements or an order or prohibition issued by a California regional water quality control board or the State Water Resources Control Board to clean up the waste or to abate the effects of the waste. The act authorizes a regional water quality control board to expend available money to perform any cleanup, abatement, or remedial work required under those circumstances, and provides for the recovery of costs associated with cleanup, abatement, and remedial actions.~~

~~This bill would make technical, nonsubstantive changes to these provisions:~~

~~Vote: majority ²/₃. Appropriation: no. Fiscal committee: no. State-mandated local program: no.~~

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

1 SECTION 1. *The Legislature finds and declares that, in adding*
 2 *Section 8 to the Orange County Water District Act in 1989, the*
 3 *Legislature intended that (1) the costs incurred by the district in*
 4 *conducting investigations to study, monitor, and evaluate the cause,*
 5 *and the nature and extent of any existing or threatened*
 6 *contamination, would be part of the cleanup, abatement, and*
 7 *remedial costs recoverable against the persons causing, or*
 8 *threatening to cause, contamination of the surface or groundwaters*
 9 *within the district, and (2) the district would be entitled to*
 10 *commence a civil action against, and recover damages from, the*
 11 *persons causing, or threatening to cause, the contamination,*
 12 *investigation, cleanup, abatement, and remedial costs incurred,*

1 or to be incurred, by the district at the time the liability of the
2 persons was determined in litigation, regardless of whether all
3 investigative, cleanup, abatement, and remedial work was
4 completed by that time. The Legislature further finds and declares
5 that this act is declaratory of existing law.

6 SEC. 2. Section 8 of the Orange County Water District Act
7 (Chapter 924 of the Statutes of 1933), as added by Section 4 of
8 Chapter 802 of the Statutes of 1989, is amended to read:

9 Sec. 8. (a) The district may conduct any ~~investigations~~
10 *investigation* of the quality of the surface and groundwaters within
11 the district ~~which that~~ the district determines to be necessary and
12 appropriate to determine whether those waters are contaminated
13 or polluted.

14 (b) The district may expend available funds to perform any
15 *investigation* cleanup, abatement, or remedial work required under
16 the circumstances ~~which that~~, in the determination of the board of
17 directors, is required by the magnitude of the endeavor or the
18 urgency of prompt action needed to prevent, abate, or contain any
19 threatened or existing contamination of, or pollution to, the surface
20 or groundwaters of the district. This action may be taken in default
21 of, or in addition to, remedial work by the person causing the
22 contamination or pollution, or other persons. The district may
23 perform the work itself, by contract, or by or in cooperation with
24 ~~any other~~ *another* governmental agency.

25 (c) If, pursuant to subdivision (b), ~~the~~ *any* contamination or
26 pollution is *investigated*, cleaned ~~up~~ *up*, or contained, the effects
27 ~~thereof of the contamination or pollution~~ abated, or in the case of
28 threatened contamination or pollution, other necessary remedial
29 action is taken, the person causing or threatening to cause that
30 contamination or pollution shall be liable to the district to the extent
31 of the reasonable costs actually incurred in *investigating*, cleaning
32 ~~up~~ *up*, or containing the contamination or pollution, abating the
33 effects of the contamination or pollution, or taking other remedial
34 action. The amount of those costs, together with court costs and
35 reasonable ~~attorneys'~~ *attorney's* fees, shall be recoverable in a
36 civil action by, and paid to, the district. In ~~any such~~ *this* action,
37 the necessity for the *investigation*, cleanup, containment,
38 abatement, or remedial work, and the reasonableness of the costs
39 incurred therewith, shall be presumed, and the defendant shall

1 have the burden of proving that the work was not necessary, and
2 the costs not reasonable.

3 *(d) The remedies provided under this section are in addition to*
4 *all other legal or equitable remedies available to the district under*
5 *statute or common law, including declaratory relief regarding*
6 *liability for the district's future costs.*

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

11 *In order to ensure that the Orange County Water District may,*
12 *at the earliest possible opportunity, investigate, clean up, and*
13 *remediate groundwater contamination that affects the quality of*
14 *drinking water resources of approximately 2,400,000 Orange*
15 *County residents, it is necessary that this act take effect*
16 *immediately.*

17 ~~SECTION 1. Section 13304 of the Water Code is amended to~~
18 ~~read:~~

19 ~~13304. (a) Any person who has discharged or discharges waste~~
20 ~~into the waters of this state in violation of a waste discharge~~
21 ~~requirement or other order or prohibition issued by a regional board~~
22 ~~or the state board, or who has caused or permitted, causes or~~
23 ~~permits, or threatens to cause or permit any waste to be discharged~~
24 ~~or deposited where it is, or probably will be, discharged into the~~
25 ~~waters of the state and creates, or threatens to create, a condition~~
26 ~~of pollution or nuisance, shall upon order of the regional board,~~
27 ~~clean up the waste or abate the effects of the waste, or, in the case~~
28 ~~of threatened pollution or nuisance, take other necessary remedial~~
29 ~~action, including, but not limited to, overseeing cleanup and~~
30 ~~abatement efforts. A cleanup and abatement order issued by the~~
31 ~~state board or a regional board may require the provision of, or~~
32 ~~payment for, uninterrupted replacement water service, which may~~
33 ~~include wellhead treatment, to each affected public water supplier~~
34 ~~or private well owner. Upon failure of any person to comply with~~
35 ~~the cleanup or abatement order, the Attorney General, at the request~~
36 ~~of the board, shall petition the superior court for that county for~~
37 ~~the issuance of an injunction requiring the person to comply with~~
38 ~~the order. In the suit, the court shall have jurisdiction to grant a~~
39 ~~prohibitory or mandatory injunction, either preliminary or~~
40 ~~permanent, as the facts may warrant.~~

1 ~~(b) (1) The regional board may expend available money to~~
2 ~~perform any cleanup, abatement, or remedial work required under~~
3 ~~the circumstances set forth in subdivision (a), including, but not~~
4 ~~limited to, supervision of cleanup and abatement activities that, in~~
5 ~~its judgment, is required by the magnitude of the endeavor or the~~
6 ~~urgency for prompt action to prevent substantial pollution,~~
7 ~~nuisance, or injury to any waters of the state. The action may be~~
8 ~~taken in default of, or in addition to, remedial work by the waste~~
9 ~~discharger or other persons, and regardless of whether injunctive~~
10 ~~relief is being sought.~~

11 ~~(2) The regional board may perform the work itself, or with the~~
12 ~~cooperation of any other governmental agency, and may use rented~~
13 ~~tools or equipment, either with operators furnished or unoperated.~~
14 ~~Notwithstanding any other law, the regional board may enter into~~
15 ~~oral contracts for the work, and the contracts, whether written or~~
16 ~~oral, may include provisions for equipment rental and in addition~~
17 ~~the furnishing of labor and materials necessary to accomplish the~~
18 ~~work. The contracts are not subject to approval by the Department~~
19 ~~of General Services.~~

20 ~~(3) The regional board shall be permitted reasonable access to~~
21 ~~the affected property as necessary to perform any cleanup,~~
22 ~~abatement, or other remedial work. The access shall be obtained~~
23 ~~with the consent of the owner or possessor of the property or, if~~
24 ~~the consent is withheld, with a warrant duly issued pursuant to the~~
25 ~~procedure described in Title 13 (commencing with Section~~
26 ~~1822.50) of Part 3 of the Code of Civil Procedure. However, in~~
27 ~~the event of an emergency affecting public health or safety, the~~
28 ~~regional board may enter the property without consent or the~~
29 ~~issuance of a warrant.~~

30 ~~(4) The regional board may contract with a water agency to~~
31 ~~perform, under the direction of the regional board, investigations~~
32 ~~of existing or threatened groundwater pollution or nuisance. The~~
33 ~~agency's cost of performing the contracted services shall be~~
34 ~~reimbursed by the regional board from the first available funds~~
35 ~~obtained from cost recovery actions for the specific site. The~~
36 ~~authority of a regional board to contract with a water agency is~~
37 ~~limited to a water agency that draws groundwater from the affected~~
38 ~~aquifer, a metropolitan water district, or a local public agency~~
39 ~~responsible for water supply or water quality in a groundwater~~
40 ~~basin.~~

1 ~~(e) (1) If the waste is cleaned up or the effects of the waste are~~
2 ~~abated, or, in the case of threatened pollution or nuisance, other~~
3 ~~necessary remedial action is taken by any governmental agency,~~
4 ~~the person or persons who discharged the waste, discharges the~~
5 ~~waste, or threatened to cause or permit the discharge of the waste~~
6 ~~within the meaning of subdivision (a), are liable to that~~
7 ~~governmental agency to the extent of the reasonable costs actually~~
8 ~~incurred in cleaning up the waste, abating the effects of the waste,~~
9 ~~supervising cleanup or abatement activities, or taking other~~
10 ~~remedial action. The amount of the costs is recoverable in a civil~~
11 ~~action by, and paid to, the governmental agency and the state board~~
12 ~~to the extent of the state board's contribution to the cleanup costs~~
13 ~~from the State Water Pollution Cleanup and Abatement Account~~
14 ~~or other available funds.~~

15 ~~(2) The amount of the costs constitutes a lien on the affected~~
16 ~~property upon service of a copy of the notice of lien on the owner~~
17 ~~and upon the recordation of a notice of lien, that identifies the~~
18 ~~property on which the condition was abated, the amount of the~~
19 ~~lien, and the owner of record of the property, in the office of the~~
20 ~~county recorder of the county in which the property is located.~~
21 ~~Upon recordation, the lien has the same force, effect, and priority~~
22 ~~as a judgment lien, except that it attaches only to the property~~
23 ~~posted and described in the notice of lien, and shall continue for~~
24 ~~10 years from the time of the recording of the notice, unless sooner~~
25 ~~released or otherwise discharged. Not later than 45 days after~~
26 ~~receiving a notice of lien, the owner may petition the court for an~~
27 ~~order releasing the property from the lien or reducing the amount~~
28 ~~of the lien. In this court action, the governmental agency that~~
29 ~~incurred the cleanup costs shall establish that the costs were~~
30 ~~reasonable and necessary. The lien may be foreclosed by an action~~
31 ~~brought by the state board on behalf of the regional board for a~~
32 ~~money judgment. Money recovered by a judgment in favor of the~~
33 ~~state board shall be deposited in the State Water Pollution Cleanup~~
34 ~~and Abatement Account.~~

35 ~~(d) If, despite reasonable effort by the regional board to identify~~
36 ~~the person responsible for the discharge of waste or the condition~~
37 ~~of pollution or nuisance, the person is not identified at the time~~
38 ~~cleanup, abatement, or remedial work is required to be performed,~~
39 ~~the regional board is not required to issue an order under this~~
40 ~~section.~~

1 ~~(e) For purposes of this section, “threaten” means a condition~~
2 ~~creating a substantial probability of harm, when the probability~~
3 ~~and potential extent of harm make it reasonably necessary to take~~
4 ~~immediate action to prevent, reduce, or mitigate damages to~~
5 ~~persons, property, or natural resources.~~

6 ~~(f) Replacement water provided pursuant to subdivision (a) shall~~
7 ~~meet all applicable federal, state, and local drinking water~~
8 ~~standards, and shall have comparable quality to that pumped by~~
9 ~~the public water system or private well owner prior to the discharge~~
10 ~~of waste.~~

11 ~~(g) (1) A public water supplier or private well owner receiving~~
12 ~~replacement water by reason of an order issued pursuant to~~
13 ~~subdivision (a), or a person or entity that is ordered to provide~~
14 ~~replacement water pursuant to subdivision (a), may request~~
15 ~~nonbinding mediation of all replacement water claims.~~

16 ~~(2) If so requested, the public water suppliers receiving the~~
17 ~~replacement water and the persons or entities ordered to provide~~
18 ~~the replacement water, within 30 days of the submittal of a water~~
19 ~~replacement plan, shall engage in at least one confidential~~
20 ~~settlement discussion before a mutually acceptable mediator.~~

21 ~~(3) Any agreement between parties regarding replacement water~~
22 ~~claims resulting from participation in the nonbinding mediation~~
23 ~~process shall be consistent with the requirements of any cleanup~~
24 ~~and abatement order.~~

25 ~~(4) A regional board or the state board is not required to~~
26 ~~participate in nonbinding mediation requested pursuant to~~
27 ~~paragraph (1).~~

28 ~~(5) The party or parties requesting the mediation shall pay for~~
29 ~~the costs of the mediation.~~

30 ~~(h) As part of any cleanup and abatement order that requires~~
31 ~~the provision of replacement water, a regional board or the state~~
32 ~~board shall request a water replacement plan from the discharger~~
33 ~~in cases where replacement water is to be provided for more than~~
34 ~~30 days. The water replacement plan is subject to the approval of~~
35 ~~the regional board or the state board prior to its implementation.~~

36 ~~(i) For purposes of this section, “water replacement plan” means~~
37 ~~a plan pursuant to which the discharger will provide replacement~~
38 ~~water in accordance with a cleanup and abatement order.~~

- 1 ~~(j) This section does not impose any new liability for acts~~
- 2 ~~occurring before January 1, 1981, if the acts were not in violation~~
- 3 ~~of existing laws or regulations at the time they occurred.~~
- 4 ~~(k) This section does not limit the authority of any state agency~~
- 5 ~~under any other law or regulation to enforce or administer any~~
- 6 ~~cleanup or abatement activity.~~
- 7 ~~(l) The Legislature declares that the amendments made to~~
- 8 ~~subdivision (a) of this section by Senate Bill 1004 of the 2003-04~~
- 9 ~~Regular Session do not constitute a change in, but are declaratory~~
- 10 ~~of, existing law.~~