

**Introduced by Committee on Natural Resources and Water
(Senators Pavley (Chair), Allen, Fuller, Hertzberg, Hueso,
Jackson, Monning, Stone, and Wolk)**

March 18, 2015

An act to amend Sections 1026, 1055, 1228.1, 1228.2, 1228.3, 1228.6, 1229, 1229.1, 1243, 1260, 1427, 1430, 1437, 1440, 1701.2, 1703, 1726, 1727, 1736, and 2863 of, and to repeal Sections 1126.2 and 2866 of, the Water Code, relating to water resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 798, as introduced, Committee on Natural Resources and Water. Water resources.

(1) 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 executive director of the State Water Resources Control Board to issue a complaint to a person who violates certain use and diversion of water provisions and subjects the violator to administrative civil liability. Existing law requires that the complaint be served by personal notice or certified mail and inform the party served that the party may request a hearing not later than 20 days from the date the party was served.

This bill would specify that the board is authorized to adopt an order setting administrative civil liability based on the allegations set forth in the complaint without a hearing, unless a written request for a hearing signed by, or on behalf of, the party served with the complaint is delivered to or received by mail by the board within 20 days after receipt of the complaint.

(2) Existing law allows a person to apply for, and the board to issue, a temporary permit for diversion and use of water, subject to certain

restrictions. Existing law allows a permittee or licensee who has an urgent need to change a point of diversion, place of use, or purpose of use to petition for, and the board to issue, a temporary change order, subject to certain restrictions.

This bill would authorize a temporary permit or a temporary change order to set monitoring, reporting, or mitigation requirements that apply before or after the authorization to divert or use water under the temporary permit or temporary change order.

(3) Existing law requires 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 in a prescribed area, unless the board determines that sufficient funds are not available for that purpose.

This bill would eliminate this provision.

(4) Existing law provides that moneys in the Water Resources Control Board Revolving Fund may be drawn from the State Treasury upon the approval of the Department of Finance without the submission of receipts, vouchers, or itemized statements, and used by the board in paying costs of making water rights determinations.

This bill would provide that moneys in the fund may be drawn from the State Treasury, upon appropriation by the Legislature, and used by the board in paying costs of making water rights determinations.

Existing law requires the Department of Finance to review the status of the fund to determine whether there are excess amounts of money not needed to carry out these provisions and, if there are excess amounts of money, to notify the Controller to transfer the excess money to the General Fund.

This bill would repeal these provisions.

(5) This bill would make various nonsubstantive changes, including repealing obsolete provisions.

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 1026 of the Water Code is amended to
2 read:
3 1026. The lead agency shall not approve a water lease until 30
4 days after the ~~state~~ board provides written public notice, including
5 notice by personal delivery or registered mail to legal users of

1 water which may be affected by the lease, as identified by the state
2 board, the Department of Fish and Game, *Wildlife*, and any party
3 requesting special notice of water leases pursuant to this chapter.
4 The water lessor shall pay a reasonable fee, in an amount
5 determined by the state board, for the cost of providing the notice.

6 SEC. 2. Section 1055 of the Water Code is amended to read:

7 1055. (a) The executive director of the board may issue a
8 complaint to any person or entity on which administrative civil
9 liability may be imposed pursuant to Section 1052, Article 4
10 (commencing with Section 1845) of Chapter 12 of Part 2 of
11 Division 2, or Section 5107. The complaint shall allege the act or
12 failure to act that constitutes a trespass or violation, the provision
13 of law authorizing civil liability to be imposed, and the proposed
14 civil liability.

15 (b) The complaint shall be served by personal notice or certified
16 mail, and shall inform the party served that the party may request
17 a hearing not later than 20 days from the date the party was served.
18 The hearing shall be before the board or a member of the board,
19 in accordance with Section 183. *The board may adopt an order*
20 *setting administrative civil liability based on the allegations set*
21 *forth in the complaint without a hearing, unless a written request*
22 *for a hearing signed by, or on behalf of, the party served with the*
23 *complaint is delivered to or received by mail by the board within*
24 *20 days after the date the party was served.*

25 (c) The board, after any necessary hearing, may adopt an order
26 setting administrative civil liability, or determining that a liability
27 shall not be imposed.

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

31 SEC. 3. Section 1126.2 of the Water Code is repealed.

32 ~~1126.2. The provisions of Assembly Bill 3036 of the 1995-96~~
33 ~~Regular Session, which, among other things, added this chapter,~~
34 ~~do not apply to any proceeding for the judicial review of a decision~~
35 ~~or order of the board that is pending on December 31, 1996, and~~
36 ~~the applicable law in effect on that date shall continue to apply to~~
37 ~~that proceeding.~~

38 SEC. 4. Section 1228.1 of the Water Code is amended to read:

39 1228.1. (a) The Legislature finds and declares that it is in the
40 public interest to provide a timely, efficient, and economic

1 procedure for the acquisition of rights to appropriate water for a
2 small domestic use, including incidental stock watering and
3 irrigation uses, a small irrigation use, and for a livestock stockpond
4 subject to prior rights.

5 (b) As used in this article:

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

12 (2) “Small irrigation use” means either of the following:

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

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

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

25 SEC. 5. Section 1228.2 of the Water Code is amended to read:

26 1228.2. (a) (1) Subject to subdivision (b), ~~any~~ a person may
27 obtain a right to appropriate water for a small domestic, small
28 irrigation, or livestock stockpond use upon first registering the use
29 with the board and thereafter applying the water to reasonable and
30 beneficial use with due diligence.

31 (2) With regard to an appropriation for small domestic use, a
32 registration shall not be filed for a facility served by or used
33 pursuant to a permit or license for domestic or municipal use, and
34 not more than one small domestic use registration shall be in effect
35 at any time for any facility. A small domestic use registration and
36 a livestock stockpond use registration may be in effect for the same
37 facility if the total combined water use covered by the registrations
38 does not exceed 10 acre-feet per ~~annum~~; *year*.

39 (3) With regard to an appropriation for small irrigation use,
40 more than one registration may be in effect at any time for a

1 registrant if the diversion or storage facilities subject to registration
2 for a registrant do not exceed the ratio of one per 20 irrigated acres,
3 and if the total water use on all acreage covered by the registrations,
4 including any water use based on other rights, does not exceed
5 100 acre-feet per ~~annum~~. *year*.

6 (4) A small domestic use registration and a small irrigation use
7 registration, or a livestock stockpond use registration and a small
8 irrigation use registration, may be in effect for the same facility
9 only if the total combined water use covered by the registrations
10 does not exceed 20 acre-feet per ~~annum~~. *year*.

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

15 (b) Initiation of rights to appropriate water pursuant to this article
16 shall be subject to Article 1.3 (commencing with Section 1205),
17 relating to fully appropriated stream systems. The board shall not
18 accept ~~any~~ a registration of water use which proposes as a source
19 of water supply ~~any~~ a stream system which has been
20 unconditionally declared by the board to be fully appropriated
21 pursuant to Section 1205, except that subdivision (b) of Section
22 1206, relating to conditional declarations of fully appropriated
23 stream systems, shall apply to registration of water use pursuant
24 to this article, and the board shall accept those registrations where
25 consistent with the conditions specified in the declaration.

26 (c) ~~On or before June 30, 1989, and annually thereafter, the~~
27 ~~Division of Water Rights~~ *The board shall annually* prepare and
28 post on its Internet Web site information summarizing the location,
29 nature, and amount of water appropriated pursuant to this article.
30 The information shall include a description of the availability of
31 unappropriated water in those stream systems which may become
32 fully appropriated within the next reporting period.

33 (d) If a registration is filed with a source of supply on a stream
34 system that the most recent report submitted under subdivision (c)
35 identifies as a stream system that may become fully appropriated
36 within the next reporting period, the registration shall not take
37 effect unless the board finds that unappropriated water is available
38 for the appropriation proposed by the registration. If the board
39 finds that unappropriated water is not available to supply the
40 proposed appropriation, the board shall, following notice and

1 hearing, determine whether that stream system should be declared
2 fully appropriated pursuant to Article 1.3 (commencing with
3 Section 1205).

4 SEC. 6. Section 1228.3 of the Water Code is amended to read:

5 1228.3. (a) Registration of water use pursuant to this article
6 shall be made upon a form prescribed by the board. The registration
7 form shall set forth all of the following:

8 (1) The name and post office address of the registrant.

9 (2) The source of water supply.

10 (3) The nature and amount of the proposed use.

11 (4) The proposed place of diversion.

12 (5) The place where it is intended to use the water.

13 (6) The time for completion of construction of diversion works
14 and for complete application of the water to the proposed use.

15 (7) A certification that the registrant has contacted a
16 representative of the Department of Fish and ~~Game~~ *Wildlife*
17 designated by that department for that purpose, has provided
18 information to that department that is set forth in the registration
19 form, and has agreed to comply with all lawful conditions,
20 including, but not limited to, conditions upon the construction and
21 operation of diversion works, required by the Department of Fish
22 and ~~Game~~ *Wildlife*. The certification shall include a copy of any
23 conditions required by the Department of Fish and ~~Game~~ *Wildlife*
24 pursuant to this paragraph.

25 (8) Any other information that may reasonably be required by
26 the board.

27 (b) Registration of water use shall be deemed completed on the
28 date that the form, executed in substantial compliance with the
29 requirements of this section, and the registration fee specified in
30 Section 1525 are received by the board.

31 (c) The board shall issue monthly a list of registrations filed
32 under this article during the preceding calendar month. This list
33 shall contain the information required by paragraphs (1) to (6),
34 inclusive, of subdivision (a). The list shall set forth a date prior to
35 which any interested person may file a written protest in opposition
36 to the approval of a stockpond registration. That date shall be not
37 later than 30 days from the date on which the list is issued. The
38 board shall mail the monthly list of registrations filed to any person
39 who so requests.

1 (d) Prior to the date set forth on the list required under
2 subdivision (c), any interested person may file with the board a
3 written protest in opposition to the approval of a stockpond
4 registration. The protest shall clearly set forth the protestant's
5 objections to the registered use based on interference with prior
6 rights. The protest shall be served on the registrant by the protestant
7 by mailing a duplicate copy of the protest to the registrant, or
8 through service undertaken in another manner determined to be
9 adequate by the board. The procedures set forth in Article 1.5
10 (commencing with Section 1345) of Chapter 5 shall be used for
11 reviewing a protested registration.

12 SEC. 7. Section 1228.6 of the Water Code is amended to read:

13 1228.6. (a) The board shall establish, and may from time to
14 time revise, reasonable general conditions to which all
15 appropriations made pursuant to this article shall be subject. The
16 conditions shall include, but shall not be limited to, the following:

17 (1) The appropriation is subject to prior rights.

18 (2) All conditions lawfully required by the Department of Fish
19 and ~~Game~~ *Wildlife* are conditions upon the appropriations.

20 (3) Diversion works shall be constructed and water applied to
21 beneficial use with due diligence.

22 (4) Registration shall be renewed and water use reported
23 pursuant to law and to the rules of the board.

24 (b) Immediately upon registration pursuant to Section 1228.3,
25 renewal of registration pursuant to Section 1228.5, or amended
26 registration pursuant to Section 1228.7, the board shall provide
27 the registrant with a written document setting forth the conditions
28 required by this section, and the perfection and exercise of rights
29 acquired pursuant to this article shall at all times be subject to those
30 conditions.

31 (c) The conditions required by this section shall be deemed
32 "terms and conditions" within the meaning of Section 1825 and
33 the expression of legislative intent contained in that section shall
34 be applicable thereto. The authority of the board to enforce the
35 terms and conditions of permits and licenses to appropriate water,
36 and to prevent the unlawful diversion of water, including, but not
37 limited to, provisions regarding cease and desist orders and the
38 revocation of permits and licenses, shall be applicable to
39 appropriations initiated or perfected pursuant to this article.

40 SEC. 8. Section 1229 of the Water Code is amended to read:

1 1229. (a) The board is not required to adopt general conditions
2 for small irrigation use pursuant to subdivision (a) of Section
3 1228.6 until the board determines that funds are available for that
4 purpose.

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

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

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

22 SEC. 9. Section 1229.1 of the Water Code is amended to read:

23 1229.1. (a) This article does not apply to those stream segments
24 for which the Director of Fish and ~~Game Wildlife~~ establishes
25 proposed streamflow requirements pursuant to Section 10002 of
26 the Public Resources Code, notwithstanding the July 1, 1989,
27 deadline for preparation of the requirements.

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

38 SEC. 10. Section 1243 of the Water Code is amended to read:

39 1243. The use of water for recreation and preservation and
40 enhancement of fish and wildlife resources is a beneficial use of

1 water. In determining the amount of water available for
2 appropriation for other beneficial uses, the board shall take into
3 account, whenever it is in the public interest, the amounts of water
4 required for recreation and the preservation and enhancement of
5 fish and wildlife resources.

6 The board shall notify the Department of Fish and ~~Game~~ *Wildlife*
7 of ~~any~~ *an* application for a permit to appropriate water. The
8 Department of Fish and ~~Game~~ *Wildlife* shall recommend the
9 amounts of water, if any, required for the preservation and
10 enhancement of fish and wildlife resources and shall report its
11 findings to the board.

12 This section shall not be construed to affect riparian rights.

13 SEC. 11. Section 1260 of the Water Code is amended to read:

14 1260. Every application for a permit to appropriate water shall
15 set forth all of the following:

- 16 (a) The name and post office address of the applicant.
- 17 (b) The source of water supply.
- 18 (c) The nature and amount of the proposed use.
- 19 (d) The location and description of the proposed headworks,
20 ditch canal, and other works.
- 21 (e) The proposed place of diversion.
- 22 (f) The place where it is intended to use the water.
- 23 (g) The time within which it is proposed to begin construction.
- 24 (h) The time required for completion of the construction.
- 25 (i) The time for the complete application of the water to the
26 proposed use.
- 27 (j) All data and information reasonably available to applicant
28 or that can be obtained from the Department of Fish and ~~Game~~
29 *Wildlife* concerning the extent, if any, to which fish and wildlife
30 would be affected by the appropriation, and a statement of any
31 measures proposed to be taken for the protection of fish and
32 wildlife in connection with the appropriation.
- 33 (k) Sufficient information to demonstrate a reasonable likelihood
34 that unappropriated water is available for the proposed
35 appropriation.

36 SEC. 12. Section 1427 of the Water Code is amended to read:

37 1427. Before making the findings required by Section 1425,
38 the board shall ~~review~~ *do all of the following*:

- 39 (a) *Review* available records, files, and decisions which relate
40 to the availability of water from the source at the proposed point

1 of diversion to serve the proposed temporary diversion and use,
2 and which relate to the rights of downstream users, shall consult
3 users.

4 (b) Consult with representatives of the Department of Fish and
5 Game; and shall make Wildlife.

6 (c) Make a field investigation, if necessary or desirable in the
7 opinion of the board.

8 SEC. 13. Section 1430 of the Water Code is amended to read:

9 1430. ~~Any~~A temporary permit issued under this chapter shall
10 not result in creation of a vested right, even of a temporary nature,
11 but shall be subject at all times to modification or revocation in
12 the discretion of the board. ~~Any~~ *The authorization to divert and*
13 *use water under a temporary permit shall automatically expire 180*
14 *days after the date of its issuance, unless an earlier date is specified*
15 *or it has been the temporary permit is revoked. The temporary*
16 *permit may set monitoring, reporting, or mitigation requirements*
17 *that apply before or after the authorization to divert or use water*
18 *under the temporary permit.*

19 SEC. 14. Section 1437 of the Water Code is amended to read:

20 1437. Before making the findings required by Section 1435,
21 the board shall review available records, files, and decisions which
22 relate to the rights of other legal users of water, consult with
23 representatives of the Department of Fish and Game, Wildlife, and
24 make a field investigation if the investigation is necessary or
25 desirable in the opinion of the board.

26 SEC. 15. Section 1440 of the Water Code is amended to read:

27 1440. ~~Any~~A temporary change order issued under this chapter
28 shall not result in creation of a vested right, even of a temporary
29 nature, but shall be subject at all times to modification or revocation
30 in the discretion of the board. ~~Any~~ *The authorization to divert and*
31 *use water under a temporary change order shall automatically*
32 *expire 180 days after the date of its issuance unless an earlier date*
33 *is specified or it has been the temporary change order is revoked.*
34 *The temporary change order may set monitoring, reporting, or*
35 *mitigation requirements that apply before or after the authorization*
36 *to divert or use water under the temporary change order.*

37 SEC. 16. Section 1701.2 of the Water Code is amended to read:

38 1701.2. A petition for change in a permit or license shall meet
39 all of the following requirements:

40 (a) State the name and address of the petitioner.

1 (b) Be signed by the petitioner, or the petitioner’s agent or
2 attorney.

3 (c) Include all information reasonably available to the petitioner,
4 or that can be obtained from the Department of Fish and ~~Game~~,
5 *Wildlife*, concerning the extent, if any, to which fish and wildlife
6 would be affected by the change, and a statement of any measures
7 proposed to be taken for the protection of fish and wildlife in
8 connection with the change.

9 (d) Include sufficient information to demonstrate a reasonable
10 likelihood that the proposed change will not injure any other legal
11 user of water.

12 (e) Contain other appropriate information and be in the form
13 required by applicable regulations.

14 SEC. 17. Section 1703 of the Water Code is amended to read:

15 1703. After filing a petition for permission to make a change,
16 the petitioner, in case the board so requires, shall cause notice
17 thereof to be given or published in the manner prescribed by the
18 board. In all cases the petitioner shall notify the Department of
19 Fish and ~~Game~~ *Wildlife* in writing of the proposed change.

20 SEC. 18. Section 1726 of the Water Code is amended to read:

21 1726. (a) (1) A permittee or licensee who proposes a
22 temporary change shall submit to the board a petition to change
23 the terms of the permit or license as required to accomplish the
24 proposed temporary change. ~~Any~~ *The* petition for a temporary
25 change shall be filed by the permittee or licensee. If the proposed
26 temporary change is for the benefit of a contractor or user supplied
27 directly or indirectly by the permittee or licensee, the permittee or
28 licensee may authorize the contractor or user to participate as a
29 copetitioner. The permittee or licensee shall identify any
30 copetitioner in the petition.

31 (2) A contractor or user described in paragraph (1), whether or
32 not designated as a copetitioner, and the person to whom the water
33 is proposed to be transferred, shall be named as parties to the
34 proceeding, with the same rights to receive notices, respond to
35 board determinations, and petition for writ of mandate as the
36 petitioner.

37 (b) A petition shall include both of the following:

38 (1) Reference to the permit or license that serves as the basis
39 for the water transfer.

1 (2) A written description of the changes in water storage, timing,
2 and point of diversion, place and purpose of use, timing and point
3 of return flow, and water quality of instream flows that are likely
4 to occur as a result of the proposed temporary change.

5 (c) A petitioner shall provide a copy of the petition to the
6 Department of Fish and ~~Game~~, *Wildlife*, the board of supervisors
7 of the county or counties in which the petitioner currently stores
8 or uses the water subject to the petition, and the board of
9 supervisors of the county or counties to which the water is proposed
10 to be transferred.

11 (d) Within 10 days of the date of submission of a petition to the
12 board, the petitioner shall publish in not less than one newspaper
13 of general circulation, in the county or counties in which the
14 petitioner currently stores or uses the water subject to the petition,
15 a notice of the petition and a brief description of the terms of the
16 proposed temporary change. The board shall, in a timely manner,
17 provide to the petitioner a list of water right holders of record on
18 file with the board who may be affected by the transfer, and the
19 petitioner shall provide written notice to those water right holders
20 not later than 10 days after the date on which the petition is
21 submitted. The board shall post the notice of petition on its Internet
22 web site not later than 10 days after the date on which the petition
23 is submitted. The notice of the petition shall specify the date on
24 which comments are due. The board may impose on the petitioner
25 any other notice requirement it determines to be necessary.

26 (e) Within 10 days of the date of receipt of a petition, the board
27 shall commence an investigation of the proposed temporary change.
28 Pursuant to that investigation, the board shall determine if the
29 water proposed to be transferred would have been consumptively
30 used or stored pursuant to the petitioner's permit or license in the
31 absence of the proposed transfer or conserved pursuant to Section
32 1011. The board also shall evaluate the changes in water storage,
33 timing and point of diversion, place and purpose of use, timing
34 and point of return flow, water quality, and instream flows, and
35 other changes that are likely to occur as a result of the proposed
36 temporary change.

37 (f) Water users that may be affected by a proposed temporary
38 change and any other interested party may file a written comment
39 regarding a petition with the board. Comments shall be filed not
40 later than 30 days after the date that the notice was published

1 pursuant to subdivision (d). The board shall evaluate and take into
2 consideration all comments that are filed in a timely manner.

3 (g) (1) Except as specified in paragraphs (2) and (3), the board
4 shall render a decision on the petition not later than 35 days after
5 the date that investigation commenced or the date that the notice
6 was published, whichever is later. The board's decision shall be
7 in accordance with the substantive standards set forth in Section
8 1727. The board shall explain its decision in writing and shall send
9 copies of the decision to the petitioner, the Department of Fish and
10 ~~Game~~, *Wildlife*, the board of supervisors of the county or counties
11 described in subdivision (c), the proposed transferee, and any party
12 who has filed a written comment in accordance with subdivision
13 (f).

14 (2) If comments are filed in accordance with subdivision (f), or
15 for any other good cause, the board may extend the date of its
16 decision for up to 20 days.

17 (3) If the board or the petitioner determines that an additional
18 extension of time for a decision is necessary for the board to make
19 the findings required by Section 1727, or that a hearing is necessary
20 for the board to make those findings, the board may extend the
21 time for a decision with the consent of the petitioner. If the
22 petitioner agrees to a hearing, the board shall identify the issues
23 for which additional evidence is required and shall fix a time and
24 place for the hearing. The board shall provide notice of the time,
25 place, and subject matter of the hearing to the petitioner, the
26 Department of Fish and ~~Game~~, *Wildlife*, the board of supervisors
27 of the county or counties described in subdivision (c), the water
28 right holders of record identified pursuant to subdivision (d), the
29 proposed transferee, and any party who has filed a written comment
30 in accordance with subdivision (f).

31 SEC. 19. Section 1727 of the Water Code is amended to read:

32 1727. (a) The board shall review a petition for a temporary
33 change of water rights in accordance with this section.

34 (b) The board shall approve a temporary change if it determines
35 that a preponderance of the evidence shows both of the following:

36 (1) The proposed temporary change would not injure any legal
37 user of the water, during any potential hydrologic condition that
38 the board determines is likely to occur during the proposed change,
39 through significant changes in water quantity, water quality, timing

1 of diversion or use, consumptive use of the water, or reduction in
2 return flows.

3 (2) The proposed temporary change would not unreasonably
4 affect fish, wildlife, or other instream beneficial uses.

5 (c) The petitioner shall have the burden of establishing that a
6 proposed temporary change would comply with paragraphs (1)
7 and (2) of subdivision (b). If the board determines that that
8 petitioner has established a prima facie case, the burden of proof
9 shall shift to any party that has filed a comment pursuant to
10 subdivision (f) of Section 1726 to prove that the proposed
11 temporary change would not comply with paragraphs (1) and (2)
12 of subdivision (b). The board may make a determination required
13 by this subdivision without a hearing.

14 (d) In reviewing a petition for a temporary change, the board
15 shall not modify any term or condition of the petitioner's permit
16 or license, including those terms that protect other legal users of
17 water, fish, wildlife, and other instream beneficial uses, except as
18 necessary to carry out the temporary change in accordance with
19 this article.

20 (e) In applying the standards set forth in paragraphs (1) and (2)
21 of subdivision (b), the board shall not deny, or place conditions
22 on, a temporary change to avoid or mitigate impacts that are not
23 caused by the temporary change. Neither the Department of Fish
24 and ~~Game~~, *Wildlife*, nor any other state agency that comments on
25 the proposed temporary change, shall propose conditions to
26 mitigate effects on fish, wildlife, or other instream beneficial uses
27 *that are not* caused by ~~factors other than~~ the proposed temporary
28 change. This subdivision does not limit the board, the Department
29 of Fish and ~~Game~~, *Wildlife*, or any other state agency, in
30 proceedings pursuant to any provision of law other than this article.

31 SEC. 20. Section 1736 of the Water Code is amended to read:

32 1736. The board, after providing notice and opportunity for a
33 hearing, including, but not limited to, written notice to, and an
34 opportunity for review and recommendation by, the Department
35 of Fish and ~~Game~~, *Wildlife*, may approve such a petition for a
36 long-term transfer where the change would not result in substantial
37 injury to any legal user of water and would not unreasonably affect
38 fish, wildlife, or other instream beneficial uses.

39 SEC. 21. Section 2863 of the Water Code is amended to read:

1 2863. All or any part of the money in the Water Resources
2 Control Board Revolving Fund may be drawn from the State
3 Treasury upon the approval of the Department of Finance without
4 the submission of receipts, vouchers, or itemized statements,
5 *Treasury, upon appropriation by the Legislature*, and used by the
6 board in paying costs of making determinations of water rights as
7 provided in this part.

8 SEC. 22. Section 2866 of the Water Code is repealed.

9 ~~2866. The Department of Finance shall, from time to time,~~
10 ~~review the status of the Water Resources Control Board Revolving~~
11 ~~Fund to determine whether there are excess amounts of money~~
12 ~~therein not needed to carry out the provisions of this chapter. If~~
13 ~~the Department of Finance determines there are such excess~~
14 ~~amounts of money in the fund, it shall notify the State Controller~~
15 ~~and the State Controller shall transfer such excess amounts of~~
16 ~~money to the General Fund.~~