

AMENDED IN SENATE JULY 26, 1995

AMENDED IN SENATE JULY 6, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 902

Introduced by Assembly Member Cortese

February 22, 1995

An act to amend Sections 2014, 5655, 5656, 12015, and 12017 of, to add Sections 13010, 13011, 13012, and 13013 to, to add Division 10.5 (commencing with Section 13220) to, and to repeal Section 13004 of, the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 902, as amended, Cortese. Fish and game.

Under existing law, specified funds are deposited in the Fish and Wildlife Pollution Cleanup and Abatement Account in the Fish and Game Preservation Fund. Existing law continuously appropriates that fund for specified purposes.

This bill would rename that account the Fish and Wildlife Pollution Account and would create 4 subaccounts within the account: the Oil Pollution Administration Subaccount, the Oil Pollution Response and Restoration Subaccount, the Hazardous Materials Administration Subaccount, and the Hazardous Materials Response and Restoration Subaccount. The bill would continuously appropriate the funds in the Oil Pollution Response and Restoration Subaccount *to the Department of Fish and Game for expenditure for specified*

purposes and continuously appropriate the funds in the Hazardous Materials Response and Restoration Subaccount to the Director of Fish and Game for expenditure for specified purposes.

This bill would, additionally, require the deposit of proceeds or recoveries from pollution and abatement actions in the Fish and Wildlife Pollution Account.

This bill would revise and recast the continuous appropriation of the remainder of the Fish and Game Preservation Fund.

Vote: majority. 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 2014 of the Fish and Game Code
 2 is amended to read:
 3 2014. (a) It is the policy of this state to conserve its
 4 natural resources and to prevent the willful or negligent
 5 destruction of birds, mammals, fish, reptiles, or amphibia.
 6 The state may recover damages in a civil action against
 7 any person or local agency which unlawfully or
 8 negligently takes or destroys any bird, mammal, fish,
 9 reptile, or amphibian protected by the laws of this state.
 10 (b) The measure of damages is the amount which will
 11 compensate for all the detriment proximately caused by
 12 the destruction of the birds, mammals, fish, reptiles, or
 13 amphibia.
 14 (c) An action to recover damages under this section
 15 shall be brought in the name of the people of the state, in
 16 a court of competent jurisdiction in the county in which
 17 the cause of action arose. The State Water Resources
 18 Control Board shall be notified of, and may join in, any
 19 action brought under this section when the activities
 20 alleged to have caused the destruction of any bird,
 21 mammal, fish, reptile, or amphibian may involve either
 22 the unlawful discharge of pollutants into the waters of the
 23 state or other violation of Division 7 (commencing with
 24 Section 13000) of the Water Code.



1 (d) This section does not apply to persons or local
2 agencies engaged in agricultural pest control, to the
3 destruction of fish in irrigation canals or works or
4 irrigation drainages, or to the destruction of birds or
5 mammals killed while damaging crops as provided by
6 law.

7 (e) No damages may be recovered against a local
8 agency pursuant to this section if civil penalties are
9 assessed against the local agency for the same detriment
10 pursuant to Division 7 (commencing with Section 13000)
11 of the Water Code.

12 (f) Any recovery or settlement of money damages,
13 including, but not limited to, civil penalties, arising out of
14 any civil action filed and maintained by the Attorney
15 General in the enforcement of this section shall be
16 deposited by the department in the subaccounts of the
17 Fish and Wildlife Pollution Account in the Fish and Game
18 Preservation Fund as specified in Section 13011.

19 (g) For purposes of this section, "local agency"
20 includes any city, county, city and county, district, public
21 authority, or other political subdivision.

22 SEC. 2. Section 5655 of the Fish and Game Code is
23 amended to read:

24 5655. (a) In addition to the responsibilities imposed
25 pursuant to Section 5651, the department may clean up
26 or abate, or cause to be cleaned up or abated, the effects
27 of any petroleum or petroleum product deposited or
28 discharged in the waters of this state or deposited or
29 discharged in any location onshore or offshore where the
30 petroleum or petroleum product is likely to enter the
31 waters of this state, order any person responsible for the
32 deposit or discharge to clean up the petroleum or
33 petroleum product or abate the effects of the deposit or
34 discharge, and recover any costs incurred as a result of the
35 cleanup or abatement from the responsible party.

36 (b) No order shall be issued pursuant to this section for
37 the cleanup or abatement of petroleum products in any
38 sump, pond, pit, or lagoon used in conjunction with crude
39 oil production which is in compliance with all applicable
40 state and federal laws and regulations.



1 (c) The department may issue an order pursuant to
2 this section only if there is an imminent and substantial
3 endangerment to human health or the environment and
4 the order shall remain in effect only until any cleanup and
5 abatement order is issued pursuant to Section 13304 of the
6 Water Code. A regional water quality control board shall
7 incorporate the department's order into the cleanup and
8 abatement order issued pursuant to Section 13304 of the
9 Water Code, unless the department's order is inconsistent
10 with any more stringent requirement established in the
11 cleanup and abatement order. Any action taken in
12 compliance with the department's order is not a violation
13 of any subsequent regional water quality control board
14 cleanup and abatement order issued pursuant to Section
15 13304 of the Water Code.

16 (d) For purposes of this section, "petroleum product"
17 means oil in any kind or form, including, but not limited
18 to, fuel oil, sludge, oil refuse, and oil mixed with waste
19 other than dredged spoil. "Petroleum product" does not
20 include any pesticide which has been applied for
21 agricultural, commercial, or industrial purposes or has
22 been applied in accordance with a cooperative
23 agreement authorized by Section 2426 of the Health and
24 Safety Code, which has not been discharged accidentally
25 or for purposes of disposal, and whose application was in
26 compliance with all applicable state and federal laws and
27 regulations.

28 SEC. 3. Section 5656 of the Fish and Game Code is
29 amended to read:

30 5656. Any recovery or settlement of money damages,
31 including, but not limited to, civil penalties arising out of
32 any civil action filed and maintained by the Attorney
33 General in the enforcement of this article shall be
34 deposited in the Fish and Wildlife Pollution Account in
35 the Fish and Game Preservation Fund.

36 SEC. 4. Section 12015 of the Fish and Game Code is
37 amended to read:

38 12015. (a) It is the intent of the Legislature that
39 expeditious cleanup is the primary interest of the people



1 of the State of California in order to protect the people
2 and the environment of the state.

3 (b) In addition to any other penalty, anyone
4 responsible for polluting, contaminating, or obstructing
5 waters of this state, or depositing or discharging materials
6 threatening to pollute, contaminate, or obstruct waters of
7 this state, to the detriment of fish, plant, bird, or animal
8 life in those waters, shall be required to remove any
9 substance placed in the waters, or to remove any material
10 threatening to pollute, contaminate, or obstruct waters of
11 this state, which can be removed, that caused the
12 prohibited condition, or to pay the costs of the removal by
13 the department.

14 (c) Prior to taking any action committing the use of
15 state funds pursuant to this section or Section 5655, the
16 department shall first make a reasonable effort to have
17 the person responsible, when that person is known and
18 readily available, remove, or agree to pay for the removal
19 of, the substance causing the prohibited condition, if the
20 responsible person acts expeditiously and does not cause
21 the prohibited condition to be prolonged to the
22 detriment of fish, plant, animal, or bird life in the affected
23 waters. When the responsible party is unknown or is not
24 providing adequate and timely cleanup, the emergency
25 reserve account of the Hazardous Substance Account in
26 the General Fund shall be used to provide funding for the
27 cleanup pursuant to Section 25351 or 25354 of the Health
28 and Safety Code. When those or other funds are not
29 available, moneys in the Fish and Wildlife Pollution
30 Account shall be available, in accordance with subdivision
31 (b) of Section 12017, for funding the cleanup expenses.

32 SEC. 5. Section 12017 of the Fish and Game Code is
33 amended to read:

34 12017. (a) Notwithstanding Section 13001, any
35 recovery or settlement of money received pursuant to
36 the following sections shall be deposited in the Fish and
37 Wildlife Pollution Account:

38 (1) Section 2014.

39 (2) Article 1 (commencing with Section 5650) of
40 Chapter 2 of Part 1 of Division 6.



1 (3) Section 12015 or 12016.

2 (4) Chapter 4 (commencing with Section 151) of
3 Division 1.5 of the Harbors and Navigation Code.

4 (5) Section 13442 of the Water Code.

5 (6) Proceeds or recoveries from pollution and
6 abatement actions.

7 (b) Moneys in the account are continuously
8 appropriated to the department, except as provided in
9 Section 13230.

10 (c) Funds in the account shall be expended for the
11 following purposes:

12 (1) Abatement, cleanup, and removal of pollutants
13 from the environment.

14 (2) Response coordination, planning, and program
15 management.

16 (3) Resource injury determination.

17 (4) Resource damage assessment.

18 (5) Economic valuation of resources.

19 (6) Restoration or rehabilitation at sites damaged by
20 pollution.

21 (d) Notwithstanding subdivision (c), funds in the
22 account in excess of one million dollars (\$1,000,000) as of
23 July 1 of each year may also be expended for the
24 preservation of California plants, wildlife, and fisheries.

25 (e) Funds in the account may be expended for
26 cleanup and abatement if a reasonable effort has been
27 made to have the responsible party pay cleanup and
28 abatement costs and funds are not available for
29 disbursement from the emergency reserve account of the
30 Hazardous Waste Control Account in the General Fund
31 pursuant to Section 25351 or 25354 of the Health and
32 Safety Code.

33 (f) The department may use funds in the account to
34 pay the costs of consultant contracts for resource injury
35 determination or damage assessment during hazardous
36 material or oil spill emergencies. These contracts are not
37 subject to Part 2 (commencing with Section 10100) of
38 Division 2 of the Public Contract Code.

39 SEC. 6. Section 13004 of the Fish and Game Code is
40 repealed.



1 SEC. 7. Section 13010 is added to the Fish and Game
2 Code, to read:

3 13010. There is a Fish and Wildlife Pollution Account
4 in the Fish and Game Preservation Fund. The Fish and
5 Wildlife Pollution Account is the successor to the Fish and
6 Wildlife Pollution Cleanup and Abatement Account in
7 the Fish and Game Preservation Fund which is hereby
8 abolished. All references in any law to the Fish and
9 Wildlife Pollution Cleanup and Abatement Account shall
10 be deemed to refer to the Fish and Wildlife Pollution
11 Account. All money in the Fish and Wildlife Pollution
12 Cleanup and Abatement Account on January 1, 1996, shall
13 be transferred to the Fish and Wildlife Pollution Account.
14 The following subaccounts are created within the Fish
15 and Wildlife Pollution Account:

- 16 (a) The Oil Pollution Administration Subaccount.
- 17 (b) The Oil Pollution Response and Restoration
18 Subaccount.
- 19 (c) The Hazardous Materials Administration
20 Subaccount.
- 21 (d) The Hazardous Materials Response and
22 Restoration Subaccount.

23 SEC. 8. Section 13011 is added to the Fish and Game
24 Code, to read:

25 ~~13011. Notwithstanding Section 13003, the state~~
26 *13011. The state* portion of any recovery or settlement
27 of money damages received pursuant to any citation or
28 charges brought under the following sections by the
29 people by or through any state or local public entity shall
30 be deposited in the following subaccounts:

- 31 (a) Administrative and judicially imposed fines,
32 penalties, or punitive damages resulting from either civil
33 or criminal action or administrative civil liability for
34 violations of the oil and petroleum product control and
35 discharge provisions of this code, including, but not
36 limited to, Sections 2014, 12011, and 12016, Chapter 6.5
37 (commencing with Section 2580) of Division 3, and
38 Chapter 2 (commencing with Section 5600) of Part 1 of
39 Division 6 shall be deposited in the Oil Pollution
40 Administration Subaccount or the Oil Pollution Response



1 and Restoration Subaccount as determined by the
2 settlement agreement, the judicial decree, or as provided
3 by law.

4 (b) Administrative and judicially imposed fines,
5 penalties, or punitive damages resulting from either
6 criminal or administrative civil liability for violations of
7 hazardous materials and other pollution laws including,
8 but not limited to, Sections 2014 and 12016, and Chapter
9 6.5 (commencing with Section 2580) of Division 3 and
10 Part 1 (commencing with Section 5500) of Division 6 shall
11 be deposited in the Hazardous Materials Administration
12 Subaccount or the Hazardous Materials Response and
13 Restoration Subaccount as determined by the settlement
14 agreement or as provided by law.

15 SEC. 9. Section 13012 is added to the Fish and Game
16 Code, to read:

17 13012. Funds on deposit in the subaccounts shall not
18 exceed the amounts prescribed below, adjusted in
19 accordance with Section 2212 of the Revenue and
20 Taxation Code to equal 1995 dollars:

21 (a) The Oil Pollution Administration Subaccount shall
22 not exceed five million dollars (\$5,000,000).

23 (b) The Oil Pollution Response and Restoration
24 Subaccount shall not exceed ten million dollars
25 (\$10,000,000).

26 (c) The Hazardous Materials Administration
27 Subaccount shall not exceed five million dollars
28 (\$5,000,000).

29 (d) The Hazardous Material Response and Restoration
30 Subaccount shall not exceed ten million dollars
31 (\$10,000,000).

32 All funds in the Fish and Wildlife Pollution Account in
33 excess of the amounts listed above, on June 30 of each
34 fiscal year, shall be used ~~in the succeeding fiscal year by~~
35 *the department in succeeding fiscal years* for projects
36 devoted to the preservation of California plants, ~~wildlife,~~
37 ~~and fisheries to the extent that action is consistent with~~
38 ~~Section 9 of Article XVI of the California Constitution.~~
39 *wildlife, and fisheries.*



1 SEC. 10. Section 13013 is added to the Fish and Game
2 Code, to read:

3 13013. (a) Appropriations from either the Oil
4 Pollution Administration Subaccount or the Hazardous
5 Materials Administration Subaccount shall not exceed
6 one third of the maximum fund level established under
7 Section 13012 in order to maintain a prudent reserve for
8 future appropriations.

9 (b) If the director, his or her deputy, or designee
10 ~~expend~~ *expends* funds from the prudent reserve
11 established pursuant to subdivision (a) for activities
12 authorized under subdivision (b) of Section 13230, ~~they~~
13 *the director, deputy, or designee* shall ensure that there
14 are adequate funds remaining in those subaccounts to
15 carry out their purposes. Expenditures from the prudent
16 reserve shall be repaid in part, or in full, from any funds
17 received pursuant to Section 13011 until those reserves
18 are fully reimbursed.

19 (c) The director, his or her deputy, or designee, shall
20 recover from the spiller, responsible party, or other
21 appropriate funding source, all expenditures paid from
22 the accounts established pursuant to subdivisions (b) and
23 (d) of Section 13230, and for all costs incurred by the
24 department arising from the administration and
25 enforcement of applicable pollution laws.

26 (d) *The director, his or her deputy, or designee, shall*
27 *ensure that there are adequate funds in the accounts and*
28 *subaccounts specified in this section to carry out their*
29 *purposes.*

30 SEC. 11. Division 10.5 (commencing with Section
31 13220) is added to the Fish and Game Code, to read:

32

33

DIVISION 10.5. EXPENDITURES

34

35 13220. Except as provided in Section 13230, the
36 money in the Fish and Game Preservation Fund is
37 appropriated as follows:

38 (a) To the department for payment of refunds of sums
39 determined by it to have been erroneously deposited in
40 the fund, including, but not limited to, money received



1 or collected in payment of fees, licenses, permits, taxes,
2 fines, forfeitures, or services.

3 (b) To the department for expenditure in accordance
4 with law for the payment of all necessary expenses
5 incurred in carrying out this code and any other laws for
6 the protection and preservation of birds, mammals,
7 reptiles, and fish.

8 (c) To the commission for expenditure in accordance
9 with law for the payment of the compensation and
10 expenses of the commissioners and employees of the
11 commission.

12 13230. (a) Funds deposited in the Oil Pollution
13 Administration Subaccount created pursuant to
14 subdivision (a) of Section 13010 shall, upon appropriation
15 by the Legislature, only be expended by the director, his
16 or her deputy, or designee, for the costs of administering
17 the pollution response, abatement, and habitat
18 restoration activities not otherwise covered, ~~but~~
19 ~~consistent with, the expenditure of funds provided for in~~
20 *authorized by* the Lempert-Keene-Seastrand Oil Spill
21 Prevention and Response Act.

22 (b) Notwithstanding Section 13340 of the
23 Government Code, funds deposited in the Oil Pollution
24 Response and Restoration Subaccount created pursuant
25 to subdivision (b) of Section 13010 are continuously
26 appropriated to *the department for expenditure by* the
27 director, his or her deputy, or designee, ~~for expenditure~~
28 without regard to fiscal years for response and restoration
29 activity related to oil spills not otherwise covered, but
30 consistent with, the expenditure of funds provided for in
31 the Lempert-Keene-Seastrand Oil Spill Prevention and
32 Response Act.

33 (c) Funds deposited in the Hazardous Materials
34 Administration Subaccount created pursuant to
35 subdivision (c) of Section 13010 shall, upon appropriation
36 by the Legislature, only be expended by the director, his
37 or her deputy, or designee, for the reasonable cost of
38 administering the hazardous materials response and
39 restoration activities of the department.



1 (1) These activities shall include the cross training and
2 staffing of existing department and interagency
3 personnel necessary to achieve efficiency in the use of
4 existing funds and resources in response to hazardous
5 materials and restoration activities of the department.

6 (2) The department may appoint and contract with
7 technical experts to assist in the response and
8 remediation of toxic material discharges.

9 (d) Notwithstanding Section 13340 of the
10 Government Code, funds deposited in the Hazardous
11 Materials Response and Restoration Subaccount are
12 continuously appropriated to the director, his or her
13 deputy, or designee, for expenditure without regard to
14 fiscal years for the response and abatement of hazardous
15 materials that are spilled or discharged on the lands and
16 in the waters of the state, and for the protection,
17 preservation, and restoration of fish and wildlife
18 impacted by discharges of hazardous materials into the
19 environment of the state. No funds appropriated
20 pursuant to this subdivision shall be expended to establish
21 permanent civil service positions nor shall any civil
22 service positions be created with contract funds
23 deposited in this subaccount.

