

Assembly Bill No. 902

CHAPTER 720

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.

[Approved by Governor October 9, 1995. Filed
with Secretary of State October 10, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 902, 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.

Appropriation: yes.

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

SECTION 1. Section 2014 of the Fish and Game Code is amended to read:

2014. (a) It is the policy of this state to conserve its natural resources and to prevent the willful or negligent destruction of birds, mammals, fish, reptiles, or amphibia.

The state may recover damages in a civil action against any person or local agency which unlawfully or negligently takes or destroys any



bird, mammal, fish, reptile, or amphibian protected by the laws of this state.

(b) The measure of damages is the amount which will compensate for all the detriment proximately caused by the destruction of the birds, mammals, fish, reptiles, or amphibia.

(c) An action to recover damages under this section shall be brought in the name of the people of the state, in a court of competent jurisdiction in the county in which the cause of action arose. The State Water Resources Control Board shall be notified of, and may join in, any action brought under this section when the activities alleged to have caused the destruction of any bird, mammal, fish, reptile, or amphibian may involve either the unlawful discharge of pollutants into the waters of the state or other violation of Division 7 (commencing with Section 13000) of the Water Code.

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

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

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

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

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

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

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



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

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

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

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

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

12015. (a) It is the intent of the Legislature that expeditious cleanup is the primary interest of the people of the State of California in order to protect the people and the environment of the state.

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

(c) Prior to taking any action committing the use of state funds pursuant to this section or Section 5655, the department shall first make a reasonable effort to have the person responsible, when that



person is known and readily available, remove, or agree to pay for the removal of, the substance causing the prohibited condition, if the responsible person acts expeditiously and does not cause the prohibited condition to be prolonged to the detriment of fish, plant, animal, or bird life in the affected waters. When the responsible party is unknown or is not providing adequate and timely cleanup, the emergency reserve account of the Hazardous Substance Account in the General Fund shall be used to provide funding for the cleanup pursuant to Section 25351 or 25354 of the Health and Safety Code. When those or other funds are not available, moneys in the Fish and Wildlife Pollution Account shall be available, in accordance with subdivision (b) of Section 12017, for funding the cleanup expenses.

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

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

(1) Section 2014.

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

(3) Section 12015 or 12016.

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

(5) Section 13442 of the Water Code.

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

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

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

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

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

(3) Resource injury determination.

(4) Resource damage assessment.

(5) Economic valuation of resources.

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

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

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



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

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

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

13010. There is a Fish and Wildlife Pollution Account in the Fish and Game Preservation Fund. The Fish and Wildlife Pollution Account is the successor to the Fish and Wildlife Pollution Cleanup and Abatement Account in the Fish and Game Preservation Fund which is hereby abolished. All references in any law to the Fish and Wildlife Pollution Cleanup and Abatement Account shall be deemed to refer to the Fish and Wildlife Pollution Account. All money in the Fish and Wildlife Pollution Cleanup and Abatement Account on January 1, 1996, shall be transferred to the Fish and Wildlife Pollution Account. The following subaccounts are created within the Fish and Wildlife Pollution Account:

- (a) The Oil Pollution Administration Subaccount.
- (b) The Oil Pollution Response and Restoration Subaccount.
- (c) The Hazardous Materials Administration Subaccount.
- (d) The Hazardous Materials Response and Restoration Subaccount.

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

13011. The state portion of any recovery or settlement of money damages received pursuant to any citation or charges brought under the following sections by the people by or through any state or local public entity shall be deposited in the following subaccounts:

(a) Administrative and judicially imposed fines, penalties, or punitive damages resulting from either civil or criminal action or administrative civil liability for violations of the oil and petroleum product control and discharge provisions of this code, including, but not limited to, Sections 2014, 12011, and 12016, Chapter 6.5 (commencing with Section 2580) of Division 3, and Chapter 2 (commencing with Section 5600) of Part 1 of Division 6 shall be deposited in the Oil Pollution Administration Subaccount or the Oil Pollution Response and Restoration Subaccount as determined by administrative or judicial settlement, or as provided by law.

(b) Administrative and judicially imposed fines, penalties, or punitive damages resulting from either criminal or administrative civil liability for violations of hazardous materials and other pollution laws including, but not limited to, Sections 2014 and 12016, and Chapter 6.5 (commencing with Section 2580) of Division 3 and Part 1 (commencing with Section 5500) of Division 6 shall be deposited in the Hazardous Materials Administration Subaccount or the



Hazardous Materials Response and Restoration Subaccount as determined by administrative or judicial settlement or as provided by law.

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

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

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

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

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

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

All funds in the Fish and Wildlife Pollution Account in excess of the amounts listed above, on June 30 of each fiscal year, shall be used by the department in succeeding fiscal years for projects that preserve California plants, wildlife, and fisheries.

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

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

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

(c) The director, his or her deputy, or designee, shall recover from the spiller, responsible party, or , in the absence of those responsible parties, from a particular pollution abatement or remediation account, all expenditures paid from the accounts established pursuant to subdivisions (b) and (d) of Section 13230, and all costs incurred by the department arising from the administration and enforcement of applicable pollution laws.

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

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



DIVISION 10.5. EXPENDITURES

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

(a) To the department for payment of refunds of sums determined by it to have been erroneously deposited in the fund, including, but not limited to, money received or collected in payment of fees, licenses, permits, taxes, fines, forfeitures, or services.

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

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

13230. (a) Funds deposited in the Oil Pollution Administration Subaccount created pursuant to subdivision (a) of Section 13010 shall, upon appropriation by the Legislature, only be expended by the director, his or her deputy, or designee, for the costs of administering the pollution response, abatement, and habitat restoration activities not otherwise authorized by the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

(b) Notwithstanding Section 13340 of the Government Code, funds deposited in the Oil Pollution Response and Restoration Subaccount created pursuant to subdivision (b) of Section 13010 are continuously appropriated to the department for expenditure by the director, his or her deputy, or designee, without regard to fiscal years for response and restoration activity related to oil spills not otherwise authorized by the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

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

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

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

(d) Notwithstanding Section 13340 of the Government Code, funds deposited in the Hazardous Materials Response and Restoration Subaccount are continuously appropriated to the director, his or her deputy, or designee, for expenditure without



regard to fiscal years for the response and abatement of hazardous materials that are spilled or discharged on the lands and in the waters of the state, and for the protection, preservation, and restoration of fish and wildlife impacted by discharges of hazardous materials into the environment of the state. No funds appropriated from this subaccount shall be expended to establish personnel positions nor shall any personnel positions be created with contract funds from this subaccount.

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