

ASSEMBLY BILL

No. 2971

Introduced by Assembly Member Olberg

February 23, 1996

An act to add Section 15.4 to the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959), relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2971, as introduced, Olberg. Mojave Water Agency: groundwater pollution: remediation.

Under existing law, the State Water Resources Control Board and the regional water quality control boards exercise the regulatory functions of the state in the field of water quality. Under the federal Clean Water Act and the Porter-Cologne Water Quality Control Act, point source discharges of pollutants to surface waters require a waste discharge permit under the national pollutant discharge elimination system (NPDES) program. The Porter-Cologne Water Quality Control Act prescribes various requirements relating to the discharge of mining waste, but limits public agency liability for the remediation of drainage from abandoned mines, as prescribed.

The Mojave Water Agency Law provides for the Mojave Water Agency and authorizes the agency's board to undertake specified functions for purposes of providing sufficient water for the land and inhabitants of the agency, including undertaking any necessary measures with regard to wells or facilities used for the extraction of groundwater,

whether operating, inactive, or abandoned, to enhance the management of groundwater resources.

This bill would authorize the agency to undertake activities that have been approved by an oversight agency, defined as either the state board or the appropriate regional board, to remediate the effects on groundwater of any discharge of pollutants on or from abandoned lands, and would provide that, notwithstanding any other provision of law, if the agency has implemented an approved remediation plan, the agency shall not be deemed, based on these remediation activities, to be the owner or operator of those lands or related facilities on those lands, and shall not be deemed, based on actions taken to implement the remediation plan, to be responsible for any discharge of pollutants on or from those lands. The bill would limit the responsibilities of the agency, as specified. The bill would make related legislative findings and declarations.

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. The Legislature finds and declares that
2 the Mojave Water Agency has identified sources of
3 groundwater pollution within its boundaries, and
4 pursuant to the water rights adjudication in City of
5 Barstow, et al. v. City of Adelanto, et al. (Superior Court
6 of the County of Riverside, No. 208568), the agency is
7 authorized to preserve and protect the groundwater
8 basin within its jurisdictional boundaries and should be
9 extended oversight and protection from liability for
10 remediation of those sources of groundwater pollution.

11 SEC. 2. Section 15.4 is added to the Mojave Water
12 Agency Law (Chapter 2146 of the Statutes of 1959), to
13 read:

14 15.4. (a) Unless the context requires otherwise, the
15 following definitions govern the construction of this
16 section:

17 (1) "Oversight agency" means either the state board
18 or the appropriate regional board.



1 (2) “Remediation plan” means a plan to improve the
2 quality of the groundwater within the jurisdiction of the
3 agency that has been directly and adversely affected by
4 groundwater pollution.

5 (b) Notwithstanding any other provision of law, if the
6 agency has submitted a remediation plan to an oversight
7 agency, the oversight agency has approved that
8 remediation plan, and the agency has implemented the
9 remediation plan, in accordance with this section, the
10 agency shall not be deemed, based on the actions taken
11 to implement the remediation plan, to be the owner or
12 operator of any abandoned lands, or any structure,
13 improvement, waste management unit, or facility on
14 those abandoned lands, and shall not be deemed, based
15 on the actions taken to implement the remediation plan,
16 to be responsible for any discharge, or the results of any
17 discharge, of pollutants on or from any abandoned lands.

18 (c) Except as provided in paragraph (d), and Chapter
19 5.5 (commencing with Section 13370) of the Water Code,
20 the responsibilities of the agency are limited to the
21 following:

22 (1) Submitting a remediation plan to an oversight
23 agency for approval in accordance with subdivision (d).
24 A remediation plan may be submitted in connection with
25 a remediation project that was commenced or completed
26 prior to January 1, 1997.

27 (2) Implementing a remediation plan that has been
28 approved by the oversight agency.

29 (3) If required by a remediation plan approved by the
30 oversight agency, maintaining any structure, waste
31 management unit, improvement, or other facility
32 constructed, improved, or placed on the abandoned
33 lands.

34 (4) Periodically monitoring and reporting as required
35 by the oversight agency.

36 (5) (A) Determining if the remediation plan
37 implemented by the remediating agency has been
38 effective to provide a substantial improvement in
39 groundwater quality affected by the discharge of
40 pollutants on or from abandoned lands.



1 (B) If the agency determines that the remediation
2 plan implemented by the agency is not effective, the
3 agency shall promptly report that determination to the
4 oversight agency. If the agency or the oversight agency
5 determines that the remediation plan implemented by
6 the agency is not effective, the agency shall submit a
7 modified remediation plan to the oversight agency that
8 includes a proposal to improve the plan to make it
9 effective, or a proposal to cease remedial activities on the
10 abandoned lands and return those lands, including the
11 groundwater quality on those lands, to a condition that
12 approximates the quality that existed prior to
13 commencing remedial activities. The agency shall
14 implement the modified remediation plan as approved
15 by the oversight agency.

16 (6) Notwithstanding any other provision of law,
17 except as provided in Chapter 5.5 (commencing with
18 Section 13370) of the Water Code, if the agency
19 implements or has implemented the approved
20 remediation plan and any modifications to the plan
21 approved by the oversight agency, the agency, with
22 regard to any discharge of pollutants that is the subject of
23 the plan, shall not be required to achieve water quality
24 objectives pursuant to, or to comply with other
25 requirements of, the Porter-Cologne Water Quality
26 Control Act (Division 7 (commencing with Section
27 13000) of the Water Code) or other laws that are
28 administered by the State Water Resources Control
29 Board or the regional water quality control boards, and
30 shall not be subject to any enforcement actions pursuant
31 to state law based on actions taken to implement the
32 approved remediation plan, except for violations
33 involving gross negligence, including reckless, willful, or
34 wanton misconduct, or intentional misconduct by the
35 agency.

36 (d) The remediation plan to be submitted by the
37 agency to the oversight agency shall include all of the
38 following:

39 (1) Identification of the abandoned lands that are the
40 subject of the plan.



1 (2) Identification of the groundwater that is affected
2 by discharges of pollutants on or from the abandoned
3 lands.

4 (3) A description of the physical conditions of the
5 abandoned lands that have had, or are having, an adverse
6 effect on groundwater quality.

7 (4) A description of the practices, including system
8 design and construction plans, and operation and
9 maintenance plans, proposed to reduce, control,
10 mitigate, or eliminate the adverse effects on groundwater
11 quality and a schedule for implementing those practices.
12 If the plan is prepared for an existing remediation project,
13 the remediation plan shall include a description of
14 practices that have been implemented and the practices
15 that are proposed to improve the existing project, if any.

16 (5) An analysis demonstrating that the
17 implementation of the practices described in the plan
18 have caused, or are expected to cause, a substantial
19 improvement in groundwater quality for the identified
20 groundwater.

21 (6) A description of monitoring or other assessment
22 activities to be undertaken to evaluate the success of the
23 implemented practices during and after implementation,
24 including an assessment of baseline conditions.

25 (7) A budget and identified funding to pay for the
26 implementation of the plan.

27 (8) Remediation goals and objectives.

28 (9) Contingency plans.

29 (10) A description of the agency's legal right to enter
30 and conduct remedial activities.

31 (11) The signature of an authorized representative of
32 the agency.

33 (12) Identification of the pollutants to be addressed by
34 the plan.

35 (e) The oversight agency shall do all of the following:

36 (1) Comply with the requirements of the California
37 Environmental Quality Act (Division 13 (commencing
38 with Section 21000) of the Public Resources Code) in
39 connection with the review of any remediation plan.



1 (2) Provide an opportunity for public review of, and
2 comment with regard to, the remediation plan.

3 (3) Disapprove, approve, or modify and approve a
4 remediation plan at a public meeting.

5 (f) (1) The oversight agency may approve the
6 remediation plan if the oversight agency finds that there
7 is substantial evidence in the record that the plan will
8 substantially improve groundwater quality affected by
9 discharges of pollutants on or from abandoned lands.

10 (2) The oversight agency may approve a remediation
11 plan for a project that the agency implemented prior to
12 January 1, 1997, if that oversight agency finds that there
13 is substantial evidence in the record that the project has
14 substantially improved groundwater quality adversely
15 affected by pollutants discharged on or from the
16 abandoned lands before the project was implemented.

17 (3) The agency is not required to include in the
18 remediation plan a plan to achieve water quality
19 objectives, with regard to any discharge of pollutants that
20 is the subject of the plan, to comply with other
21 requirements of the Porter-Cologne Water Quality
22 Control Act (Division 7 (commencing with Section
23 13000) of the Water Code), except for Chapter 5.5
24 (commencing with Section 13370) of Division 7 of the
25 Water Code, or to comply with any other law that is
26 administered by the state board or the regional boards,
27 with regard to that discharge of pollutants.

28 (4) The oversight agency may approve a modification
29 of an approved remediation plan to permit additional
30 time for completing the remediation project or to
31 otherwise modify the plan, after an opportunity for public
32 comment.

33 (5) If the oversight agency determines that the agency
34 is not implementing the approved remediation plan in
35 substantial compliance with its terms, that oversight
36 agency shall notify the agency of its determination,
37 including the specific causes for that determination.

38 (6) If the oversight agency determines that the
39 specific causes for the determination are not adequately
40 addressed pursuant to paragraph (5), or if a compliance



1 plan is not submitted to, and approved by, the oversight
2 agency within 180 days from the date of the notification
3 pursuant to paragraph (5), the oversight agency may
4 determine that the agency is in violation of this section.
5 If the agency is determined to be in violation of this
6 section, the agency is not protected by the limitations on
7 responsibility provided by this section for remediation of
8 groundwater quality adversely affected by discharges of
9 pollutants on or from abandoned lands and may be
10 subject to any enforcement action authorized by law.

11 (g) This section has no effect on either of the following:

12 (1) The tort liability of the agency for personal injury
13 or wrongful death.

14 (2) The liability of the agency based upon activities
15 other than those undertaken in connection with the
16 implementation of an approved remediation plan.

