

Assembly Bill No. 2971

CHAPTER 518

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

[Approved by Governor September 14, 1996. Filed
with Secretary of State September 16, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2971, 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 groundwater pollution or pollutants in soils that threaten to cause groundwater pollution on lands within the jurisdiction of the agency. The bill 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 affected lands, as defined, 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 affected lands or related facilities on those affected lands. The bill would limit the responsibilities of the agency, as specified. The bill would provide that it has no effect on specified matters and would make related legislative findings and declarations.

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

SECTION 1. The Legislature finds and declares that the Mojave Water Agency has identified sources of groundwater pollution within its boundaries, and pursuant to the water rights adjudication in City of Barstow, et al. v. City of Adelanto, et al. (Superior Court of the County of Riverside, No. 208568), the agency is authorized to preserve and protect the groundwater basin within its jurisdictional boundaries and should be extended oversight and protection from responsibility for remediation of those sources of groundwater pollution.

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

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

(1) "Affected lands" means lands that are affected by groundwater pollution or pollutants in soils that threaten to cause groundwater pollution and are in a location where the agency has implemented or proposes to implement a remediation plan.

(2) "Oversight agency" means either the State Water Resources Control Board or the appropriate regional water quality control board. "Remediation plan" means a plan to improve the quality of groundwater underlying lands within the jurisdiction of the agency that has been directly and adversely affected by groundwater pollution.

(b) Notwithstanding any other provision of law, if the agency has submitted a remediation plan to an oversight agency, the oversight agency has approved that remediation plan, and the agency has implemented the remediation plan, in accordance with this section, the agency shall not be deemed, based on the actions taken to implement the remediation plan, to be the owner or operator of any affected lands, or any structure, improvement, waste management unit, or facility on those affected lands, and shall not be deemed, based on the actions taken to implement the remediation plan, to be responsible for any discharge, or the results of any discharge, of pollutants on or from those affected lands or any structure, improvement, waste management unit, or facility on those affected lands.

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

(1) Submitting a remediation plan to an oversight agency for approval in accordance with subdivision (d).

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

(3) If required by a remediation plan approved by the oversight agency, maintaining any structure, waste management unit,



improvement, or other facility constructed, improved, or placed on the affected lands.

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

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

(B) If the agency determines that the remediation plan implemented by the agency is not effective, the agency shall promptly report that determination to the oversight agency. If the agency or the oversight agency determines that the remediation plan implemented by the agency is not effective, the agency shall submit a modified remediation plan to the oversight agency that includes a proposal to improve the plan to make it effective, or a proposal to cease remedial activities on the affected lands and return those lands, including the groundwater quality on those lands, to a condition that approximates the quality that existed prior to commencing remedial activities. The agency shall implement the modified remediation plan as approved by the oversight agency.

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

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

(1) Identification of the affected lands that are the subject of the plan, including a legal description and the owner of record.

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

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

(4) A description of the practices, including system design and construction plans, and operation and maintenance plans, proposed



to reduce, control, mitigate, or eliminate the adverse effects on groundwater quality and a schedule for implementing those practices.

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

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

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

(8) Remediation goals and objectives.

(9) Contingency plans.

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

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

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

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

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

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

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

(f) (1) The oversight agency may approve the remediation plan if the oversight agency finds that there is substantial evidence in the record that the plan will substantially improve groundwater quality affected by discharges of pollutants on or from affected lands. The oversight agency may disapprove a remediation plan even if there is substantial evidence that the plan would improve the groundwater quality.

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

(3) The oversight agency may approve a modification of an approved remediation plan to permit additional time for completing



the remediation project or to otherwise modify the plan, after an opportunity for public comment.

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

(5) If the oversight agency determines that the specific causes for the determination are not adequately addressed pursuant to paragraph (4), or if a compliance plan is not submitted to, and approved by, the oversight agency within 180 days from the date of the notification pursuant to paragraph (4), the oversight agency may determine that the agency is in violation of this section. If the agency is determined to be in violation of this section, the agency is not protected by the limitations on responsibility provided by this section for remediation of groundwater quality adversely affected by discharges of pollutants on or from affected lands and may be subject to any enforcement action authorized by law.

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

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

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

(3) The responsibilities of the owner of affected lands or other property that is the source of pollutants on affected lands or any other person responsible for activities that caused or permitted the discharge of pollutants.

(4) The liability of the agency for damages resulting from the agency's negligent implementation of the remediation plan.

