

Senate Bill No. 133

Passed the Senate May 26, 2009

Secretary of the Senate

Passed the Assembly August 27, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Article 9.3 (commencing with Section 31142.20) to Chapter 1 of Part 5 of Division 12 of the Water Code, relating to the Alameda County Water District.

LEGISLATIVE COUNSEL'S DIGEST

SB 133, Corbett. Groundwater: wells, exploratory holes, and other excavations.

(1) Existing law, the County Water District Law, provides for the formation and operation of county water districts, and specifies the powers and purposes of those districts.

This bill would authorize the Alameda County Water District, within described areas of its jurisdiction, to establish a permit program, and to take related action, with regard to the construction, operation, decommissioning, abandonment, or destruction of wells, exploratory holes, or other excavations for the purpose of protecting groundwater. The district would be authorized to establish a procedure for the abatement as a public nuisance of any abandoned or unused well, exploratory hole, or other excavation that creates or threatens to create a water contamination hazard. The bill would declare that any costs incurred by the district to abate the public nuisance are a lien and would require the district to record with the county any notice of a lien that is prepared by the district. Any person who applies for a land development permit or approval, within the areas described by the bill, would be required to obtain specified documentation from the district with regard to the property proposed to be developed. By imposing requirements on the district in connection with the regulation of wells, exploratory holes, and other excavations, the bill would impose a state-mandated local program.

The bill would state the findings and declarations of the Legislature concerning the need for special legislation.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Article 9.3 (commencing with Section 31142.20) is added to Chapter 1 of Part 5 of Division 12 of the Water Code, to read:

Article 9.3. Alameda County Water District

31142.20. This article shall be known and may be cited as the Alameda County Water District Groundwater Protection Act.

31142.22. This article only applies to all property within the boundaries of the Cities of Fremont, Newark, and Union City.

31142.24. Unless the context requires otherwise, the definitions set forth in this section govern the construction of this article.

(a) “Aquifer” means a geologic formation from which groundwater may be extracted.

(b) “Aquitard” means a geologic formation with very low permeability.

(c) “Board” means the board of directors of the district.

(d) “District” means the Alameda County Water District.

(e) “Exploratory hole” means a temporary excavation constructed by any method, for the purpose of determining subsurface geological or hydrogeological information.

(f) “General manager” means the general manager of the district.

(g) “Groundwater” means water beneath the natural surface of the ground, whether or not flowing through known and definite channels.

(h) “Other excavation” means an excavation or structure, other than a well or an exploratory hole, constructed by any method that intersects an aquifer, or that may impact the integrity of any aquitard located directly above an aquifer.

(i) “Well” means any artificial excavation constructed by any method for the purpose of monitoring groundwater levels, extracting, injecting, or circulating water, or extracting, injecting, or circulating other fluid or gas solely for the purpose of soil or groundwater remediation, beneath the natural surface of the ground.

31142.26. The district may take the following actions within the boundaries of the Cities of Fremont, Newark, and Union City to carry out this article:

(a) Adopt, by ordinance, regulations the board deems necessary or proper to carry out this article.

(b) Inspect and investigate wells, exploratory holes, and other excavations and enforce regulations adopted by the board regarding the construction, use, maintenance, repair, improvement, decommissioning, or destruction of wells, exploratory holes, other excavations, and appurtenances.

(c) Take measurements, collect data, including samples of groundwater, and make analyses pertaining to wells and the use of groundwater within the district.

(d) Require persons or entities to obtain a permit from the district to construct, operate, decommission, abandon, or destroy a well, exploratory hole, or other excavation.

(e) Impose and collect fees to recover the cost of inspecting wells, exploratory holes, and other excavations and otherwise implement and enforce this article.

(f) Require the sealing of abandoned or unused wells according to regulations adopted by the board that are designed to protect groundwater from contamination.

31142.28. Any person applying for any land development permit or approval within the boundaries described in Section 31142.22 shall obtain documentation from the district indicating that existing wells or other excavations are in compliance with the regulations of the district or that no wells or other excavations have been identified within the boundaries of the property proposed to be developed.

31142.30. Any abandoned or unused well, exploratory hole, or other excavation that creates or threatens to create a water contamination hazard is a public nuisance. The board shall adopt, by ordinance, regulations to carry out this section.

31142.32. If the district determines that a public nuisance exists, it shall, by certified mail, notify the record owner of the property to abate the public nuisance. The notice of public nuisance shall describe the public nuisance and specify the time, date, and place for a hearing regarding the public nuisance. The hearing shall take place no sooner than 10 calendar days and no later than 60 calendar days from the date of mailing of the notice of public nuisance. At

the hearing, district staff shall present evidence of a public nuisance and the record owner may present evidence to the general manager that a public nuisance does not exist or has been abated.

31142.34. If, after the hearing, the general manager determines that a public nuisance exists, the district shall, by certified mail, send a notice to the record owner requiring that the record owner abate the public nuisance within a specified time. The notice shall state that, unless the public nuisance is abated within the time specified by the district, the district may abate the public nuisance and the costs of the abatement will be assessed against the property.

31142.36. If the public nuisance is not abated within the time specified by the district in the notice, the district may abate the public nuisance. Any entry upon private property by the district for this purpose shall be preceded by written notice to the record owner of the property stating the date and place of entry and that the purpose of entry is to abate the public nuisance. If the mailed notice is returned undelivered, the district shall post a copy of the notice at the proposed entry point of the property at least five days prior to entry. Thereafter, the district may take all actions necessary to abate the public nuisance.

31142.38. (a) All costs incurred by the district in abating a public nuisance pursuant to this article are a lien upon the property.

(b) Notice of the lien shall include the name of the record owner, the property on which the nuisance was abated, and the amount of the lien. The notice of lien shall be recorded by the district in the Office of the Alameda County Recorder within one year after the date on which the district initially incurs costs to abate the public nuisance or within 90 days after the completion of the abatement of the public nuisance, whichever occurs first. Upon recordation of the notice of lien, the lien shall have the same force, effect, and priority as a judgment lien, except that it will attach only to the property described in the notice, and shall continue until released or otherwise discharged.

31142.39. All actions authorized by this article shall be undertaken in a manner that is consistent with the federal Clean Water Act (33 U.S.C. Sec. 1341 et seq.) and Division 7 (commencing with Section 13000).

SEC. 2. The Legislature finds and declares that this act, which applies only to the Alameda County Water District, is necessary to authorize that district to take action to protect the Niles Cone

Groundwater Basin from contamination by regulating wells, exploratory holes, and other excavations within the boundaries of the Cities of Fremont, Newark, and Union City. The Legislature further finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and that the enactment of this special law is necessary for the conservation and use of that groundwater for the public good.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Approved _____, 2009

Governor