



CALIFORNIA

# Water Boards

STATE WATER RESOURCES CONTROL BOARD  
REGIONAL WATER QUALITY CONTROL BOARDS

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## Statutory Water Rights Law

And Related California Code Sections  
(As amended, including Statutes 2015)

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JANUARY 2016

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



STATE OF CALIFORNIA  
Jerry Brown, Governor

STATE WATER RESOURCES CONTROL BOARD

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Frances Spivy-Weber, Vice Chair  
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Stephen Moore, Member

•  
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Jonathan Bishop, Chief Deputy Director  
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For additional copies or further information, contact the  
State Water Resources Control Board, Office of Public Affairs  
(916) 341-5254

## STATE WATER RESOURCES CONTROL BOARD

The State Water Resources Control Board was established in 1967 by the Legislature (See Water Code Section 175). The Board succeeded to the functions of the former State Water Rights Board and the State Water Quality Control Board.

The formation of the Board resulted in the coordination of the water rights, water pollution, and water quality functions of the state government. Water pollution and water quality are now taken into account in conjunction with availability of unappropriated water whenever applications for appropriation of water are considered.

This pamphlet contains statutes which concern the administration of water rights law. A companion booklet entitled *The Porter-Cologne Water Quality Control Act* addresses the State Board's water quality programs.



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## INTRODUCTION

The State Water Resources Control Board publishes this collection of California statutes pertaining to the law of water rights as part of its public information program. This booklet contains sections from the California Constitution, the California Water Code, and other related codes which affect water rights decisions.

This booklet is provided as a public service. It contains only excerpts of the Water Code. While every effort is made to assure accuracy, persons should consult the official version of the California Code when making legal decisions. The California Legislative Counsel maintains the official code, which is accessible on the Internet at:

<http://leginfo.legislature.ca.gov/faces/codes.xhtml>.

In addition to the statutes contained in this booklet, decisions of the State Water Resources Control Board are guided by case law. A listing of major recent decisions is included.

## THE STATUTES IN CONTEXT

In general, the statutes contained in this booklet govern the acquisition and exercise of rights to reasonable and beneficial use of surface waters (and of groundwater flowing in known and definite channels) by priority of appropriation initiated on or after December 19, 1914. That is the effective date of the Water Commission Act, which is the origin of many of the water right provisions of today's Water Code.

California law recognizes and protects rights to the use of surface waters other than rights initiated pursuant to the Water Commission Act or the Water Code. Foremost among these are rights acquired by priority of appropriation initiated before December 19, 1914, commonly referred to as "pre-1914 rights" (see *Wells v. Mantes* (1893) 99 Cal. 583) and riparian water rights, which are part and parcel of lands contiguous to streams or lakes (see *Lux v. Haggin* (1886) 69 Cal. 255). Although several provisions of the Water Code imply the existence of these other rights, they are essentially the product of the decisional law of the courts of this State.

Although pre-1914 and riparian rights are not established pursuant to the Water Code, some administrative procedures established under the Water Code apply to pre-1914 and riparian water rights. (See, e.g., Water Code, §§ 275, 1707, 1841 & 5101.) In addition, the Water Code authorizes a proceeding whereby all rights to the use of surface waters within a given stream system, regardless of doctrinal origin, may be adjudicated on a system-wide basis. (See Water Code, § 2500 and following sections.) This proceeding, known as a statutory adjudication, quantifies and prioritizes all water rights and integrates

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them into a comprehensive decree, thus producing a high degree of certainty and security of right.

California law also recognizes and protects rights to extract and use waters percolating beneath the surface of the land. Again, while the Water Code implies the existence of these groundwater rights, their doctrinal bases and characteristics are essentially the product of the decisions of our courts. (See *Katz v. Walkinshaw* (1902) 141 Cal. 138; additional opinion on rehearing (1903) 141 Cal. 116.) Finally, the section of the California Constitution reproduced in this booklet (Cal. Const., art. X, § 2) is recognized as the fundamental expression of the water policy of this State. Our Constitution requires that the beneficial use of water be maximized, that water be conserved, and that water be diverted and used under the rule of reasonableness. This Constitutional mandate applies to all uses of water, regardless of the legal basis of the water right. (See *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351.)

## RECENT JUDICIAL DECISIONS

Since the mid-1970s, appellate courts (including the United States Supreme Court) have issued several important opinions on water right issues. These decisions include the following in chronological order:

- *Bank of America N.T. & S.A. v. State Water Resources Control Bd.* (1974) 42 Cal. App.3d 198 [116 Cal.Rptr. 770]. In reviewing public interest findings of the State Water Resources Control Board in proceedings on applications to appropriate water, the courts are to use the “substantial evidence” standard of review.
- *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199 [123 Cal.Rptr. 1, 537 P.2d 1250]. This case explains numerous points of law with respect to rights to use of groundwater, including pueblo rights, rights to recapture waters imported and spread to augment groundwater supplies, overlying rights and appropriative rights.
- *People v. Forni* (1976) 54 Cal.App.3d 743 [126 Cal.Rptr. 851]. To carry out the California Constitution mandate that beneficial use of water be maximized and that waste and unreasonable use and diversion be prohibited, riparian owners can properly be required to incur some reasonable costs or experience some inconvenience in connection with exercise of their riparian water rights.
- *California v. United States* (1978) 438 U.S. 645. Pursuant to the Federal Reclamation Act of 1902, the State may impose conditions on water appropriations of the United States Bureau of Reclamation, so long as any such condition does not directly conflict with any clear Congressional directive respecting the federal project.

- *United States v. New Mexico* (1978) 438 U.S. 696. The federal reserved water right, which is a right created by federal law, is limited to that amount of water required to meet the primary purposes for which the federal land was withdrawn. Water rights needed to serve secondary reservation purposes must be acquired pursuant to state law.
- *Fullerton v. State Water Resources Control Bd.* (1979), 90 Cal.App.3d 590 [153 Cal. Rptr. 518]; and *California Trout, Inc. v. State Water Resources Control Bd.* (1979) 90 Cal.App.3d 816 [153 Cal.Rptr. 672]. Although recreation and fish and wildlife preservation and enhancement are beneficial uses of water under California water rights law, an in situ use for these purposes cannot be the basis of an application to appropriate water.
- *In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339 [158 Cal.Rptr. 350, 599 P.2d 656]. In a general statutory adjudication proceeding pursuant to Water Code Section 2500 and following sections, the Board may—if the constitutional rule of reasonableness so requires—provide for assigning a lower priority to presently unexercised riparian rights than the priority assigned to all presently active rights, whether riparian or appropriative.
- *People v. Shirokow* (1980) 26 Cal.3d 301 [162 Cal.Rptr. 30, 605 P.2d 859]. Since the Water Commission Act, a prescriptive water right cannot be acquired against the authority of the State to allocate water through the permit system.
- *Environmental Defense Fund. v. East Bay Muni. Util. Dist.* (1980) 26 Cal.3d 183 [161 Cal.Rptr. 466, 605 P.2d 1]. The Board and the superior courts have concurrent original jurisdiction to enforce the self-executing provisions of Article X, Section 2 of the California Constitution, except where overriding considerations exist, such as are presented by health and safety dangers, in which case the Board should have exclusive original jurisdiction.
- *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709], cert. denied 464 U.S. 977. This decision explains the relationship between the public trust doctrine and the appropriative water rights doctrine, including the duty and authority of the Board and the courts to safeguard public trust uses of navigable waters.
- *Wright v. Goleta Water Dist.* (1985) 174 Cal.App.3d 74 [219 Cal.Rptr. 740]. The Long Valley principle (*supra*), which authorizes the Board to define and otherwise limit future riparian rights in conducting a statutory adjudication procedure pursuant to Water Code Section 2500 and following sections is not applicable in a superior court groundwater adjudication. Accordingly, the superior court may not subordinate an unexercised overlying right claim to presently exercised appropriative uses.
- *United States. v. State Water Resources Control Bd.* (“Delta Water Cases”) (1986) 182 Cal.App.3d 82 [227 Cal.Rptr. 161]. This decision explains and

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clarifies numerous points of water law, including the relationship between the Board's water quality planning authority under the Porter-Cologne Water Quality Control Act (Water Code Section 13000 and following sections) and the Board's water right authority. This case also explains the Board's authority under the public trust doctrine and the prohibition against waste or unreasonable diversion or use of water to reopen water rights to implement water quality objectives.

- *Imperial Irrigation District v. State Water Resources Control Bd. (IID I)* (1986) 186 Cal.App.3d 1160 [231 Cal.Rptr. 283]. The Board is authorized to hold hearings, make findings, and issue orders in a proceeding on alleged waste or unreasonable diversion or use of water by a party that holds pre-1914 rights and receives water under federal contract. The Board's findings and orders in such a proceeding are subject to review by the courts by way of an administrative mandamus action.
- *In re Waters of Hallett Creek* (1988) 44 Cal.3d 448 [243 Cal.Rptr. 887, 749 P.2d 324], cert. denied 488 U.S. 824. The United States has riparian rights on federal reserved lands (e.g., national forest lands). The riparian rights of the United States on its reserved lands are the same as the rights of a private landowner on privately held land. However, the riparian rights of the United States on public domain land (e.g., lands administered by the Bureau of Land Management) are inferior to the rights of appropriation on the public land.
- *California Trout, Inc. v. State Water Resources Control Bd. (Cal. Trout I)* (1989) 207 Cal.App.3d 585 [255 Cal.Rptr. 184]. This case explains the relationships between Fish and Game Code Sections 5937 and 5946, the public trust doctrine, and the prohibition against waste or unreasonable diversion or use of water. A variant of the public trust applies to non-navigable streams which sustain a fishery. The Fish and Game Code sections applicable in this case, requiring that a dam owner allow sufficient water to pass to keep fish in good condition below the dam, do not violate the reasonableness doctrine.
- *Golden Feather Community Association v. Thermalito Irrigation Dist.* (1989) 209 Cal.App.3d 1276 [257 Cal.Rptr. 836]. The public trust doctrine does not require an appropriator who diverts water to storage at an artificial reservoir on a non-navigable stream to forego use of that water to maintain the reservoir for the recreational use of the public.
- *California v. Federal Energy Regulatory Commission (Rock Creek)* (1990) 495 U.S. 490. The State cannot condition a water right permit for hydropower generation on bypass flow requirements for the protection of instream beneficial uses in excess of flows required by the Federal Energy Regulatory Commission license for the project.

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- *Imperial Irrigation Dist. v. State Water Resources Control Bd. (IID II)* (1990) 225 Cal. App.3d 548 [275 Cal.Rptr. 250], cert. denied (1991) 502 U.S. 857. The requirement that a water right holder cease waste or unreasonable diversion or use of water does not interfere with any vested right.
  - *Sayles Hydro Associates. v. Maughan* (9th Cir. 1993) 985 F.2d 451. Federal Energy Regulatory Commission licensing occupies the field of hydropower regulation, preempting State water right requirements except to the extent the State's requirements relate to protection of proprietary rights.
  - *PUD No. 1 of Jefferson County v. Washington Department of Ecology* (1994) 511 U.S. 700. This case discusses the relationship between water quality and water quantity. States have authority under Section 401 of the Clean Water Act to require Federal Energy Regulatory Commission licensed hydropower projects to bypass flows to protect instream beneficial uses.
  - *Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166 [36 Cal.Rptr.2d 886]. State water law does not preempt county ground water management.
  - *Jordan v. City of Santa Barbara* (1996) 46 Cal.App.4th 1245 [54 Cal.Rptr.2d 340]. The priority of a riparian to natural flow of a stream is limited by what is reasonably required for beneficial use, not by distinctions as to whether the waters involved are "ordinary" or "flood" waters.
  - *Pleasant Valley Canal Co. v. Borrer* (1998) 61 Cal.App.4th 742 [72 Cal.Rptr. 2d 1]. Diversions in excess of the amount that can be put to reasonable beneficial use must be returned to the stream. Where prior private decree did not include all water right claimants, and expressly limits its application to a determination of rights as between the plaintiff and each individual defendant, the decree is not binding as between co-defendants. When an appropriator by direct diversion later obtains a patent to riparian lands where water is being put to use pursuant to the appropriation, the owner has both appropriative and riparian rights. A private decree that does not include all water right claimants along a stream will not be construed to have extinguished unexercised riparian rights of parties to the decree absent clear evidence to that effect. Conveyance of land for road right of way, under circumstances where it would be unreasonable to assume that grantor intended to give up water rights on irrigable portions of the property being retained, does not sever riparian rights on retained property.
  - *Natural Resources Defense Council v. Houston* (9th Cir. 1998) 146 F.3d 1118. Section 8 of the Reclamation Act of 1902 requires the United States to comply with state water laws unless those laws are directly inconsistent with clear congressional directives regarding the project. The term "congressional directive" means a preemptive federal statute. The provisions of the Central Valley Project Improvement Act concerning Friant Dam do not preempt section 5937 of the California Fish and Game Code.

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- *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931 [91 Cal.Rptr.2d 66]. The Federal Power Act does not preempt state laws concerning environmental impacts of operation of a Federal Energy Regulatory Commission licensed multi-purpose water development project to the extent those state laws are applied to use of the project for consumptive use purposes.
  - *State v. Superior Court (Underwriters at Lloyd's London)* (2000) 78 Cal.App.4th 1019 [93 Cal.Rptr.2d 276]. Under section 102 of the Water Code, the State of California owns water in a regulatory, supervisory sense, but does not own it in a proprietary sense.
  - *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224 [99 Cal.Rptr.2d 294, 5 P.3d 853]. In an adjudication of water rights, the doctrine of equitable apportionment does not provide authority for court to impose on a non-settling party a settlement among other parties that allocates rights to water in a manner that disregards the water right priorities of the claimants. A court may impose a physical solution to achieve a practical allocation of water among competing interests, but a physical solution is a remedy that does not materially affect prior legal water rights, and does not provide a basis for allocating water in a manner that ignores the priorities of the parties asserting water rights.
  - *People v. Murrison* (2002) 101 Cal.App.4th 349 [124 Cal.Rptr.2d 68]. A water right, whether modern or pre-1914, is not exempt from reasonable regulation, including the streambed alteration agreement requirements of the Fish and Game Code. A takings challenge to a requirement for a permit for the diversion of water raises a regulatory takings issue, not a physical invasion issue. An appropriative right is limited to the amount that can reasonably be put to beneficial use. Proof of when a claimed pre- 1914 right was first exercised, without evidence of the amounts historically used throughout the period since then, is insufficient to establish a prima facie case of a claimed pre-1914 water right.
  - *California Trout, Inc. v. Federal Energy Regulatory Commission* (9th Cir. 2002) 313 F.3d 1131. Although state water quality certification is required before the Federal Energy Regulatory Commission (FERC) may relicense a hydroelectric project, water quality certification is not required when FERC issues annual licenses allowing continued operation pending completion of relicensing proceedings.
  - *Central and West Basin Water Replenishment Dist. v. Southern California Water Co.* (2003) 109 Cal.App.4th 891 [135 Cal.Rptr.2d 486].) It is appropriate for a water right adjudication decree to include an expansive reservation of jurisdiction. The unused storage space in a groundwater basin is a public resource. An adjudicated right to extract groundwater from a basin does not confer a right to unused storage space in the basin.

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- *Central Delta Water Agency v. State Water Resources Control Bd.* (2004) 124 Cal. App.4th 245 [20 Cal.Rptr.3d 898]. The purpose and place of use must be specified before the Board issues a water right permit; permitting of an expansive place to allow water marketing without identifying customers before issuance of the permit is improper. Environmental documentation under the California Environmental Quality Act must include evaluation of the specific intended beneficial use or uses. Water Code section 1392 is not a restriction on sale of water where the transferrer retains the water right.
  - *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674 [39 Cal. Rptr.3d 189], cert. denied 549 U.S. 889. When a water quality control plan calls for an objective to be achieved by allocating responsibility to meet that objective in a water rights proceeding, water rights orders must fully implement that objective, and may not provide a time schedule for implementation unless the time schedule is in the water quality control plan. The “no injury” rule, which bars changes in a point of diversion, place of use or purposes of use if they result in injury to any legal user of water, applies only if the injury infringes on a legally protected interest. Because a riparian has no right to water stored by appropriators, the “no injury” rule does not apply to change in availability of water that results from changes in releases from storage. Where a water right holder proposes a change to its water rights, the “no injury” rule does not bar a change that would reduce deliveries to a party that contracts for water deliveries from the water right holder unless that reduction in deliveries would constitute a breach of contract. The priority for area of origin uses over Central Valley Project and State Water Project exports under the watershed protection statute (Wat. Code, § 11460 et seq.) may be asserted by a party that has or applies for a water right permit or for a contract with the projects. The watershed protection statute does not give irrigation or municipal use within the area of origin priority over releases for water quality or instream beneficial uses within the area of origin. The place of use for the Central Valley Project’s water right permits is determined by the permits, applications, and accompanying maps, not the service areas of the districts that contract for water from the Central Valley Project.
  - *Barnes v. Hussa* (2006) 136 Cal.App.4th 1358 [39 Cal.Rptr.3d 659]. Under Water Code section 1706, a party claiming it is injured by a change in a pre-1914 right has the burden of proof. Forfeiture for non-use cannot be imposed based on periods where water was not available under the appropriator’s right to divert.
  - *Allegretti v. County of Imperial* (2006) 138 Cal.App.4th 1261 [42 Cal.Rptr.3d 122]. A takings challenge to pumping restrictions or other limitations on diversions raises a regulatory takings issue, not a physical invasion issue.

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Arizona v. California (2006) 547 U. S. 150. Consolidated decree entered in Colorado River adjudication.

- *S.D. Warren v. Maine Board of Environmental Protection* (2006) 547 U.S. 370. State water quality certification is required for Federal Energy Regulatory Commission (FERC) hydropower relicensing because the release of water from a hydroelectric dam is a “discharge” within the meaning of section 401 of the Clean Water Act. A State may address issues involving water project operation alteration of water quality, including loss of habitat from low flow conditions and blockage of fish passage or recreational use by dams, as part of water quality certification.
- *North Gualala Water Company v. State Water Resources Control Bd.* (2006) 139 Cal.App.4th 1577 [43 Cal.Rptr.3d 821]. The State Water Resources Control Board’s four-part test for determining whether a groundwater extraction is within the Board’s permitting authority is a proper interpretation of the statutory phrase “subterranean streams flowing through known and definite channels.” Water flowing in an alluvial channel may be subject to the Board’s permitting authority even if it does not constitute underflow of a surface stream. An impact test, making groundwater subject to the Board’s permitting authority based on the impact of pumping on surface flows, would not be consistent with the Water Code. Conditions imposed in water right permits and orders approving water right changes cannot be challenged as a defense to a proceeding brought to enforce those conditions.
- *El Dorado Irrigation District v. State Water Resources Control Bd.* (2006) 142 Cal.App.4th 937 [48 Cal.Rptr.3d 468]. The rule of priority applies only to natural or abandoned flows in a watercourse; no riparian or appropriator has a right to use water that was previously stored or imported by another. The priority for area of origin uses over Central Valley Project and State Water Project exports under the watershed protection statute (Wat. Code, § 11460 et seq.) does not entitle a water right holder in the area of origin to divert at times when natural or abandoned flows are insufficient to meet water quality objectives and the Central Valley Project and State Water Project are releasing water from storage to meet those objectives. The State Water Resources Control Board cannot assign responsibility for meeting water quality objectives in a manner that undermines water right priorities without substantial justification for doing so. When the Board issues a permit based on a state filed application the Board cannot impose a permit term designed to prevent diversion when natural flows are insufficient to meet water quality objectives and the Central Valley Project and the State Water Project are releasing water from storage to meet those objectives, unless the Board also modifies previously issued permits that are junior in priority to impose the same requirement.

- *North Kern Water Storage District v. Kern Delta Water District* (2007) 147 Cal.App. 4th 555 [54 Cal.Rptr.3d 578] Forfeiture is based on failure to use water available to an appropriator, including water available because senior water right holders are not diverting all of the water they are entitled to. Forfeiture of a senior water right does not necessarily make unappropriated water available, because junior appropriators may be able to make use of the forfeited water, during periods when there otherwise would not have been sufficient water available to fully satisfy those junior rights.
- *Phelps v. State Water Resources Control Bd.* (2007) 157 Cal.App.4th 89 [68 Cal.Rptr.3d 350] Conditions imposed in water right permits and licenses cannot be challenged as a defense to a proceeding brought to enforce those conditions. Standard water right Term 91, which requires permittees and licensees in the Bay/ Delta watershed to curtail their diversions when the Central Valley Project and the State Water Project are making supplemental releases to meet water quality objectives, does not violate the watershed protection statute (Wat. Code, § 11460 et seq.) or the Delta Protection Act. (Id. § 12200 et seq.)
- *Nicoll v. Rudnick* (2008) 160 Cal.App.4th 550 [72 Cal.Rptr.3d 879]. Where a pre- 1914 appropriative right has been adjudicated to an entire parcel, a conveyance of a portion of the parcel that does not expressly mention water rights conveys a share of the appropriative right in proportion to the portion of the entire parcel that is conveyed.
- *Brewer v. Murphy* (2008) 161 Cal.App.4th 928 [74 Cal.Rptr.3d 436]. A lower riparian owner who directly diverts water from an upper riparian owner's land may acquire prescriptive water rights against the upper riparian owner as a result of adverse use. Prescription must be shown by clear and convincing evidence.
- *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421. [121 Cal.Rptr.3d 372, 47 P. 3d 112]. The statute imposing annual water right permit and license fees establishes a regulatory fee, not a tax. Fees for water rights held by the United States Bureau of Reclamation may be allocated to federal water delivery contractors based on the contractor's beneficial interest.
- *In re Quantification Settlement Agreement Cases* (2011) 201 Cal.App. 4th 758. [134 Cal.Rptr.3d 274] cert.denied (2012) 133 S. Ct. 312. This case includes an extensive background discussion of Colorado River Allocations.
- *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266. [149 Cal.Rptr.3d 491] cert. denied (2013) 134 S. Ct. 98. The existence of a water shortage is not necessary for imposition of a physical solution. Groundwater appropriation during a period of groundwater overdraft, for a period of five or more years, can establish a prescriptive right against non-public groundwater right holders. Overlying users who pump during the

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prescriptive period retain their overlying rights, subject to the volume of the prescriptive taking. The rights to water developed through storage of surface waters with subsequent infiltration of that water, under circumstances where that water would not otherwise recharge an aquifer, are held by the party that developed the water.

- *Young v. State Water Resources Control Bd.* (2013) 219 Cal.App.4th 397 [161 Cal. Rptr.3d 829]. The State Water Resources Control Board’s authority to determine whether an unauthorized diversion or use is occurring, and issue a cease-and-desist order for any unauthorized diversion or use, includes authority to determine whether a diversion claimed to be authorized under a riparian or pre-1914 appropriative rights is in fact authorized under a valid riparian or pre-1914 right. *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463 [173 Cal.Rptr.3d 200] The State Water Resources Control Board’s authority to prevent waste or unreasonable use of water extends to all users, regardless of the basis under which the users’ water rights are held. The board may adopt regulations setting general rules governing the reasonable use of water.
- *Millview County Water District v. State Water Resources Control Bd.* (2014) 229 Cal.App.4th 879 [177 Cal.Rptr.3d 735]. The State Water Resources Control Board has authority to determine whether an unauthorized diversion or use is occurring, including determination whether a claimed pre-1914 has been perfected or forfeited, for purposes of determining whether to issue a cease-and-desist order for unauthorized diversion or use. Appropriative rights are perfected and protected from forfeiture based on beneficial use, not amounts diverted. An appropriative right cannot be acquired based on use authorized under riparian right. Notwithstanding non-use for a period of five years or more, appropriate rights are not forfeited where the appropriator resumes beneficial use before others make use of or claim a right to use of the water not being used by the appropriator.
- *Siskiyou County Farm Bureau v. Department of Fish and Wildlife* (2015) 237 Cal.App.4th 411 [188 Cal.Rptr.3d 141]. The streambed alteration agreement requirements of the Fish and Game Code apply to substantial diversions from a river or stream, whether or not there is an alteration of the stream channel. Requiring mitigation or curtailment of diversions to protect fish and wildlife would not constitute an unconstitutional taking. Avoiding potential regulatory overlap with State Water Resources Control Board authority does not provide a basis for interpreting the Department of Fish and Wildlife’s authority to protect fish and wildlife narrowly.

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# CALIFORNIA CONSTITUTION

## ARTICLE X. WATER

*(Article 10 added June 8, 1976, by Prop. 14. Res.Ch. 5, 1976. )*

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**SEC. 2.** It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Riparian rights in a stream or water course attach to, but to no more than so much of the flow thereof as may be required or used consistently with this section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which the owner's land is riparian under reasonable methods of diversion and use, or as depriving any appropriator of water to which the appropriator is lawfully entitled. This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained.

*(Sec. 2 added June 8, 1976, by Prop. 14. Res.Ch. 5, 1976.)*

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# WATER CODE

## GENERAL PROVISIONS

*(General Provisions enacted by Stats. 1943, Ch. 368.)*

**§ 1.** This act shall be known as the Water Code.

*(Enacted By Stats. 1943, Ch. 368.)*

**§ 2.** The provisions of this code, in so far as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations thereof, and not as new enactments.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 3.** All persons who, at the time this code takes effect, hold office under any of the acts repealed by this code, which offices are continued by this code, continue to hold them according to their former tenure.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 4.** No action or proceeding commenced before this code takes effect, and no right accrued, is affected by this code, but all procedure thereafter taken therein shall conform to the provisions of this code so far as possible.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 5.** Unless the provision or the context otherwise requires, these definitions, rules of construction, and general provisions shall govern the construction of this code.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 6.** Division, part, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 7.** Whenever a power is granted to, or a duty is imposed upon, a public officer, the power may be exercised or the duty may be performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 8.** Writing includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement, petition, or record is required or authorized by this code, it shall be made in writing in the English language unless it is expressly provided otherwise.

*(Enacted by Stats. 1943, Ch. 368.)*

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**§ 9.** Whenever reference is made to any portion of this code or of any other law of this State, the reference applies to all amendments and additions heretofore or hereafter made.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 10.** “Section” means a section of this code unless some other statute is specifically mentioned. “Subdivision” means a subdivision of the section in which that term occurs unless some other section is expressly mentioned.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 11.** The present tense includes the past and future tenses, and the future, the present.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 12.** The masculine gender includes the feminine and the neuter.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 13.** The singular number includes the plural, and the plural, the singular.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 14.** “County” includes city and county.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 15.** “Shall” is mandatory and “may” is permissive.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 16.** “Oath” includes affirmation.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 17.** “Signature” or “subscription” includes mark when the signer or subscriber can not write, such signer’s or subscriber’s name being written near the mark by a witness who writes his own name near the signer’s or subscriber’s name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 18.** “State” means the State of California, unless applied to the different parts of the United States. In the latter case, it includes the District of Columbia and the territories.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 19.** “Person” means any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company.

*(Amended by Stats. 1994, Ch. 1010, Sec. 226. Effective January 1, 1995.)*

**§ 20.** “United States” means the United States of America, and in relation to any particular matter includes the officers, agents, employees, agencies, or instrumentalities authorized to act in relation thereto.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 21.** If any provision of this code, or the application thereof to any person or circumstance, is held invalid, the remainder of the code, or the application of such provision to other persons or circumstances, shall not be affected thereby.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 22.** “Department,” unless otherwise specified, means the Department of Water Resources.

*(Amended by Stats. 1956, 1st Ex. Sess., Ch. 52.)*

**§ 23.** “Director,” unless otherwise specified, means the Director of Water Resources.

*(Repealed and added by Stats. 1956, 1st Ex. Sess., Ch. 52.)*

**§ 24.** The standard miner’s inch of water is equivalent to one and one-half cubic feet of water per minute, measured through any aperture or orifice.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 25.** “Board,” unless otherwise specified, means the State Water Resources Control Board.

*(Added by Stats. 1967, Ch. 284.)*

**§ 26.** For the purposes of this code, “recycled water” or “reclaimed water” has the same meaning as recycled water as defined in subdivision (n) of Section 13050.

*(Added by Stats. 1995, Ch. 28, Sec. 11.5. Effective January 1, 1996.)*

## **DIVISION 1. GENERAL STATE POWERS OVER WATER**

### **[100. - 540.]**

*(Division 1 enacted by Stats. 1943, Ch. 368.)*

#### **CHAPTER 1. GENERAL STATE POLICY [100. - 113.]**

*(Chapter 1 enacted by Stats. 1943, Ch. 368.)*

**§ 100.** It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this State is and shall be limited to

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such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. (Enacted by Stats. 1943, Ch. 368.)

**§ 100.5.** It is hereby declared to be the established policy of this state that conformity of a use, method of use, or method of diversion of water with local custom shall not be solely determinative of its reasonableness, but shall be considered as one factor to be weighed in the determination of the reasonableness of the use, method of use, or method of diversion of water, within the meaning of Section 2 of Article X of the California Constitution. (Added by Stats. 1980, Ch. 933, Sec. 1.)

**§ 101.** Riparian rights in a stream or watercourse attach to, but to no more than so much of the flow thereof as may be required or used consistently with this and the next preceding section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing in this or the next preceding section shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which his land is riparian under reasonable methods of diversion and use, or of depriving any appropriator of water to which he is lawfully entitled. (Enacted by Stats. 1943, Ch. 368.)

**§ 102.** All water within the State is the property of the people of the State, but the right to the use of water may be acquired by appropriation in the manner provided by law. (Enacted by Stats. 1943, Ch. 368.)

**§ 103.** In the enactment of this code the Legislature does not intend thereby to effect any change in the law relating to water rights. (Enacted by Stats. 1943, Ch. 368.)

**§ 104.** It is hereby declared that the people of the State have a paramount interest in the use of all the water of the State and that the State shall determine what water of the State, surface and underground, can be converted to public use or controlled for public protection. (Enacted by Stats. 1943, Ch. 368.)

**§ 105.** It is hereby declared that the protection of the public interest in the development of the water resources of the State is of vital concern to the people of the State and that the State shall determine in what way the water of the State, both surface and underground, should be developed for the greatest public benefit. (Enacted by Stats. 1943, Ch. 368.)

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**§ 106.** It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 106.3.** (a) It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

(b) All relevant state agencies, including the department, the state board, and the State Department of Public Health, shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water described in this section.

(c) This section does not expand any obligation of the state to provide water or to require the expenditure of additional resources to develop water infrastructure beyond the obligations that may exist pursuant to subdivision (b).

(d) This section shall not apply to water supplies for new development.

(e) The implementation of this section shall not infringe on the rights or responsibilities of any public water system.

*(Added by Stats. 2012, Ch. 524, Sec. 1. Effective January 1, 2013.)*

**§ 106.5.** It is hereby declared to be the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses, but that no municipality shall acquire or hold any right to waste water, or to use water for other than municipal purposes, or to prevent the appropriation and application of water in excess of its reasonable and existing needs to useful purposes by others subject to the rights of the municipality to apply such water to municipal uses as and when necessity therefor exists.

*(Added by Stats. 1945, Ch. 1344.)*

**§ 106.7.** (a) It is hereby declared to be the established policy of this state to support and encourage the development of environmentally compatible small hydroelectric projects as a renewable energy source, provided that the projects do not result in surface disturbances within the following sensitive areas:

(1) Any component of the California Wild and Scenic Rivers System or the National Wild and Scenic Rivers System.

(2) Any river designated for study pursuant to Section 5(a) of the National Wild and Scenic River Act (16 U.S.C. 1276(a)). This paragraph shall not apply to any river which, upon the completion of the study, is not included in the National Wild and Scenic Rivers System.

(3) Any state or federally designated wilderness area.

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(4) Any areas designated as a “Critical Condor Habitat” by the United States Fish and Wildlife Service.

(b) State agencies shall not approve small hydroelectric development within the sensitive areas specified in subdivision (a).

(c) Significant adverse impacts associated with small hydroelectric projects shall be identified by those agencies responsible for the preparation of the environmental impact document.

(d) Emphasis on the development of small hydroelectric power generating facilities which are “qualifying small power production facilities” under Section 210 of the Public Utilities Regulatory Policies Act of 1978, shall be on existing dams, diversions, and canals with a sufficient drop so that power may be efficiently generated without significant environmental effects.

(e) For hydroelectric power generating facilities, the applicant shall demonstrate that project revenues will exceed project costs, including the cost of mitigation measures over the life of the project.

(f) Subdivisions (d) and (e) do not apply to projects with a nameplate capacity of less than 100 kilowatts.

*(Amended by Stats. 1986, Ch. 807, Sec. 1.)*

**§ 107.** The declaration of the policy of the State in this chapter is not exclusive, and all other or further declarations of policy in this code shall be given their full force and effect.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 108.** It is hereby declared to be the established policy of this State that in the development and completion of any general or co-ordinated plan prepared and published by the Department of Water Resources or any predecessor thereof or successor thereto, all uses, including needs of the area in which the water originates, of water shall be given consideration.

Whenever the Legislature authorizes the construction or acquisition by the State of any project which will develop water for use outside the watershed in which it originates, the Legislature shall at the same time consider the authorization and the construction or acquisition of such other works as may be necessary to develop water to satisfy such of the reasonable ultimate requirements of such watershed as may be needed at the time the export project is authorized or as will be needed within a reasonable time thereafter. The authorization with respect to such additional works may provide for state acquisition or construction, in whole or in part, of any such additional works, or financial assistance to other entities in connection with the acquisition or construction of such works, or a combination thereof.

*(Added by Stats. 1959, Ch. 2063.)*

**§ 109.** (a) The Legislature hereby finds and declares that the growing water needs of the state require the use of water in an efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water and transferability of such rights. It is hereby declared to be the established policy of this state to facilitate the voluntary transfer of water and water rights where consistent with the public welfare of the place of export and the place of import.

(b) The Legislature hereby directs the Department of Water Resources, the State Water Resources Control Board, and all other appropriate state agencies to encourage voluntary transfers of water and water rights, including, but not limited to, providing technical assistance to persons to identify and implement water conservation measures which will make additional water available for transfer.

*(Amended by Stats. 1982, Ch. 867, Sec. 1.)*

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**§ 113.** It is the policy of the state that groundwater resources be managed sustainably for long-term reliability and multiple economic, social, and environmental benefits for current and future beneficial uses. Sustainable groundwater management is best achieved locally through the development, implementation, and updating of plans and programs based on the best available science.

*(Added by Stats. 2014, Ch. 346, Sec. 2. Effective January 1, 2015.)*

## **CHAPTER 2. STATE ADMINISTRATION GENERALLY [120. - 190.]**

*(Chapter 2 enacted by Stats. 1943, Ch. 368.)*

### **Article 1. Department of Water Resources [120. - 147.5.]**

*(Heading of Article 1 amended by Stats. 1956, 1st Ex. Sess., Ch. 52.)*

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**§ 138.10.** (a) On or before January 1, 2006, the director, in collaboration with the Secretary of Interior or his or her designee, shall prepare a plan to meet the existing permit and license conditions for which the department has an obligation, as described in the State Water Resources Control Board Decision No. 1641.

(b) The plan shall be designed to achieve compliance with the permit and license conditions described in subdivision (a). The director shall prepare the plan, and submit copies of the plan to the board and the California Bay-Delta Authority, prior to increasing the existing permitted diversion rate at the State Water Project's Harvey O. Banks Pumping Plant.

(c) Nothing in this section limits or restricts the department in its operation of the State Water Project due to failure of other water rights

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permittees or licensees to meet water quality conditions of their respective permits or licenses.

*(Added by Stats. 2004, Ch. 612, Sec. 1. Effective January 1, 2005.)*

**§ 138.12.** (a) Except as otherwise provided in a general obligation bond act, the maximum amount that may be allocated for administrative expenses shall not exceed 5 percent of the total amount of funds that the department is required to administer and that are derived from a general obligation bond act that is approved on or after January 1, 2007.

(b) The maximum amount that may be allocated for administrative expenses shall not exceed 5 percent of the total amount of funds that result from the sale of revenue bonds by the department.

*(Added by Stats. 2006, Ch. 831, Sec. 1. Effective January 1, 2007.)*

**§ 139.2.** The department shall evaluate the potential impacts on water supplies derived from the Sacramento-San Joaquin Delta based on 50-, 100-, and 200-year projections for each of the following possible impacts on the delta:

- (1) Subsidence.
- (2) Earthquakes.
- (3) Floods.
- (4) Changes in precipitation, temperature, and ocean levels.
- (5) A combination of the impacts specified in paragraphs (1) to (4),

inclusive.

*(Added by Stats. 2005, Ch. 573, Sec. 2. Effective January 1, 2006.)*

**§ 139.4.** (a) The department and the Department of Fish and Game shall determine the principal options for the delta.

(b) The department shall evaluate and comparatively rate each option determined in subdivision (a) for its ability to do the following:

- (1) Prevent the disruption of water supplies derived from the Sacramento-San Joaquin Delta.
- (2) Improve the quality of drinking water supplies derived from the delta.
- (3) Reduce the amount of salts contained in delta water and delivered to, and often retained in, our agricultural areas.
- (4) Maintain delta water quality for delta users.
- (5) Assist in preserving delta lands.
- (6) Protect water rights of the “area of origin” and protect the environments of the Sacramento-San Joaquin river systems.
- (7) Protect highways, utility facilities, and other infrastructure located within the delta.
- (8) Preserve, protect, and improve delta levees.

(c) The Department of Fish and Game shall evaluate and comparatively rate each option determined in subdivision (a) for its ability to restore salmon

and other fisheries that use the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

(d) On or before January 1, 2008, the department and the Department of Fish and Game shall jointly report to the Legislature and Governor, in writing, with regard to the results of the evaluation required by Section 139.2 and the comparative ratings required by subdivisions (b) and (c).

*(Added by Stats. 2005, Ch. 573, Sec. 3. Effective January 1, 2006.)*

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**§ 141.5.** The department shall proceed with the construction of the South Delta Improvements Program, but shall not commence the operational phase of the program until the director certifies, in writing, to the Legislature that the department has completed the operational studies of the project and that the environmental review required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) includes a comparison between the implementation of the program and the maintenance of current operations.

*(Added by Stats. 2006, Ch. 77, Sec. 59. Effective July 18, 2006.)*

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### **Article 3. State Water Resources Control Board [174. - 189.5.]**

*(Heading of Article 3 amended by Stats. 1967, Ch. 284.)*

**§ 174.** (a) The Legislature hereby finds and declares that in order to provide for the orderly and efficient administration of the water resources of the state, it is necessary to establish a control board that shall exercise the adjudicatory and regulatory functions of the state in the field of water resources.

(b) It is also the intention of the Legislature to combine the water rights, water quality, and drinking water functions of the state government to provide for coordinated consideration of water rights, water quality, and safe and reliable drinking water.

(c) This section shall become operative on July 1, 2014.

*(Repealed (in Sec. 181) and added by Stats. 2014, Ch. 35, Sec. 182. Effective June 20, 2014. Section operative July 1, 2014, by its own provisions.)*

**§ 175.** (a) There is in the California Environmental Protection Agency the State Water Resources Control Board consisting of five members appointed by the Governor. One of the members appointed shall be an attorney admitted to practice law in this state who is qualified in the fields of water supply and water rights, one shall be a registered civil engineer under the laws of this state who is qualified in the fields of water supply and water rights, one shall be a registered professional engineer under the laws of this state who is experienced in sanitary engineering and who is qualified in the field of water quality, and one shall be

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qualified in the field of water quality. One of the above-appointed persons, in addition to having the specified qualifications, shall be qualified in the field of water supply and water quality relating to irrigated agriculture. One member shall not be required to have specialized experience.

(b) Each member shall represent the state at large and not any particular portion thereof and shall serve full time. The board shall, to the extent possible, be composed of members from different regions of the state. The appointments made by the Governor shall be subject to confirmation by the Senate in accordance with Article 2 (commencing with Section 1770) of Chapter 4 of Division 4 of Title 1 of the Government Code.

*(Amended by Stats. 2010, Ch. 288, Sec. 2. Effective January 1, 2011.)*

**§ 175.5.** (a) A member of the board shall not participate in any board action pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 in which the board member has a disqualifying financial interest in the decision within the meaning of Section 87103 of the Government Code.

(b) A board member shall not participate in any proceeding before any regional board as a consultant or in any other capacity on behalf of any waste discharger.

(c) Upon the request of any person, or on the Attorney General's own initiative, the Attorney General may file a complaint in the superior court for the county in which the board has its principal office alleging that a board member has knowingly violated this section and the facts upon which the allegation is based and asking that the member be removed from office. Further proceedings shall be in accordance as near as may be with rules governing civil actions. If after trial the court finds that the board member has knowingly violated this section it shall pronounce judgment that the member be removed from office.

*(Amended by Stats. 2012, Ch. 39, Sec. 115. Effective June 27, 2012.)*

**§ 176.** The annual salary of the members of the board is provided for by Chapter 6 (commencing at Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code. Each member of the board shall receive the necessary traveling and other expenses incurred by him in the performance of his official duties out of appropriations made for the support of the board. When necessary the members of the board may travel within or without the State.

*(Added by renumbering Section 186 by Stats. 1957, Ch. 1932.)*

**§ 177.** All members of the board shall be appointed for terms of four years. Vacancies shall be immediately filled by the Governor for the unexpired portion of the terms in which they occur.

*(Amended by Stats. 1983, Ch. 40, Sec. 2. Effective May 26, 1983.)*

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**§ 178.** The members of the board may be removed from office by the Legislature, by concurrent resolution adopted by a majority vote of all members elected to each house, for dereliction of duty or corruption or incompetency. *(Added by renumbering Section 188 by Stats. 1957, Ch. 1932.)*

**§ 179.** The board succeeds to and is vested with all of the powers, duties, purposes, responsibilities, and jurisdiction vested in the Department and Director of Public Works, the Division of Water Resources of the Department of Public Works, the State Engineer, the State Water Quality Control Board, or any officer or employee thereof, under Division 2 (commencing with Section 1000), except Part 4 (commencing with Section 4000) and Part 6 (commencing with Section 5900) thereof; and Division 7 (commencing with Section 13000) of this code, or any other law under which permits or licenses to appropriate water are issued, denied, or revoked or under which the functions of water pollution and quality control are exercised. *(Amended by Stats. 1967, Ch. 284.)*

**§ 179.6.** The board, or representatives authorized by the board to do so, may call, conduct or attend conferences or hearings, official or unofficial, within or without this state, or otherwise participate in such conferences or hearings with interested persons, agencies or officers, of this or any other state, or with the Congress of the United States, congressional committees, or officers of the federal government, concerning any matter within the scope of the power and duties of the board. *(Added by Stats. 1967, Ch. 284.)*

**§ 179.7.** As to any matter involving the United States, its departments or agencies, which is within the scope of the power and duties of the board, the board may represent the interest of the state or any county, city, state agency or public district upon their request, and to that end may correspond, confer and cooperate with the United States, its departments or agencies, and where necessary the board members, or authorized representatives, may travel either within or without the state. *(Added by Stats. 1967, Ch. 284.)*

**§ 181.** The board shall maintain its headquarters at Sacramento and may establish branch offices in such parts of the state as the board deems necessary. The board shall hold meetings at such times and at such places as shall be determined by it. The Governor shall designate the time and place for the first meeting of the board. Three members of the board shall constitute a quorum for the purpose of transacting any business of the board. *(Amended by Stats. 1967, Ch. 1656.)*

**§ 182.** The Governor shall designate the chairperson of the board from the membership of the board. The person so designated shall hold the office of

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chairperson at the pleasure of the Governor. The board shall elect a vice chairperson.

*(Amended by Stats. 2010, Ch. 288, Sec. 3. Effective January 1, 2011.)*

**§ 183.** The board may hold any hearings and conduct any investigations in any part of the state necessary to carry out the powers vested in it, and for such purposes has the powers conferred upon heads of departments of the state by Article 2 (commencing with Section 11180), Chapter 2, Part 1, Division 3, Title 2 of the Government Code.

Any hearing or investigation by the board may be conducted by any member upon authorization of the board, and he shall have the powers granted to the board by this section, but any final action of the board shall be taken by a majority of all the members of the board, at a meeting duly called and held.

All hearings held by the board or by any member thereof shall be open and public

*(Amended by Stats. 1971, Ch. 1288.)*

**§ 184.** The Department of Water Resources shall have an interest and may appear as a party in any hearing held by the board and may commence or appear in any judicial proceeding brought to inquire into the validity of any action, order, or decision of the board.

*(Added by renumbering Section 194 by Stats. 1957, Ch. 1932.)*

**§ 185.** The board shall adopt rules for the conduct of its affairs in conformity, as nearly as practicable, with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

*(Amended by Stats. 1982, Ch. 454, Sec. 184.)*

**§ 186.** (a) The board shall have any powers, and may employ any legal counsel and other personnel and assistance, that may be necessary or convenient for the exercise of its duties authorized by law.

(b) For the purpose of administration, the board shall organize itself, with the approval of the Governor, in the manner it deems necessary properly to segregate and conduct the work of the board. The work of the board shall be divided into at least two divisions, known as the Division of Water Rights and the Division of Water Quality. The board shall appoint a deputy director or division chief for each division, who shall supervise the work of the division and act as technical adviser to the board on functions under his or her jurisdiction.

(c) The Attorney General shall represent the board, or any affected regional water quality control board, or both the board and the regional board, and the state in litigation concerning affairs of the board, or a regional board, or both, unless the Attorney General represents another state agency that is a party to the action. In that case, the Attorney General may represent the board, the regional board, or both, with the written consent of the board and the other

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state agency, the board may contract for the services of private counsel to represent the board, the regional board, or both, subject to Section 11040 of the Government Code, or the legal counsel of the board may represent the board, the regional board, or both. Sections 11041, 11042, and 11043 of the Government Code are not applicable to the board. The legal counsel of the board shall advise and furnish legal services, except representation in litigation, to the regional boards upon their request.

*(Amended by Stats. 2010, Ch. 288, Sec. 4. Effective January 1, 2011.)*

**§ 187.** The board, regional water quality control boards, the Department of Water Resources, and other state agencies shall, to the fullest extent possible, exchange records, reports, material, and any other information relating to water, water rights, water pollution or quality, or any areas of mutual concern, to the end that unnecessary duplication of effort may be avoided.

*(Amended by Stats. 1967, Ch. 284.)*

**§ 188.** The board may expend money appropriated for the administration of the laws the administration of which is committed to the board.

Such expenditures by the board shall be made in accordance with law in carrying on the work for which the appropriations were made.

*(Added by Stats. 1957, Ch. 1932.)*

**§ 188.5.** The board shall publish biennial progress reports relating to the activities of the board and California regional water quality control boards.

*(Amended by Stats. 1969, Ch. 482.)*

**§ 189.** (a) There is hereby established the Office of Sustainable Water Solutions within the state board, which may be administered by the state board as a separate organizational unit or within the state board's divisions or offices.

(b) The purpose of the office is to promote permanent and sustainable drinking water and wastewater treatment solutions to ensure the effective and efficient provision of safe, clean, affordable, and reliable drinking water and wastewater treatment services. In furtherance of this purpose, the office may take, but is not limited to, all of the following actions:

(1) Coordinating with and providing assistance to small drinking water systems, wastewater treatment systems, and disadvantaged communities without drinking water or wastewater treatment systems.

(2) Promoting and facilitating regional drinking water and wastewater projects.

(3) Promoting and facilitating regional solutions, including consolidation of existing water districts, expansion of existing water districts to serve communities unserved by public water systems and wastewater treatment systems, and extension of services to underserved communities and disadvantaged communities.

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(4) Advancing the delivery of affordable, safe drinking water to disadvantaged communities throughout the state.

(5) Providing technical assistance to disadvantaged communities and small drinking water systems and wastewater systems, including grant application assistance, outreach and education in vulnerable communities, financial management support, and facilitation of discussions within and between communities.

*(Added by Stats. 2015, Ch. 2, Sec. 6. Effective March 27, 2015.)*

**§ 189.5.** (a) This section shall be known, and may be cited, as the Low-Income Water Rate Assistance Act.

(b) No later than January 1, 2018, the board, in collaboration with the State Board of Equalization and relevant stakeholders, shall develop a plan for the funding and implementation of the Low-Income Water Rate Assistance Program, which shall include all of the following elements:

(1) A description of the method for collecting moneys to support and implement the program, including a discussion of any constitutional restrictions on public water agency ratesetting.

(2) A description of the mechanism for providing funding assistance under the program through either direct credits to enrollees in the program or reimbursements to water service providers, including a method for verifying income eligibility of low-income ratepayers, clarification of the role of the Public Utilities Commission and water utilities in determining and verifying customer eligibility, and recommendations regarding the structure of the program, particularly whether it will be administered by the state or locally administered.

(3) A description of the method to be used to determine the amount of moneys that may need to be collected from water ratepayers to fund the program. The plan shall include a set of recommendations and best practices of cost-savings measures to ensure water utilities are demonstrating whether and how they are keeping rates low. This section does not authorize the imposition of a state charge to fund the program.

(c) In developing the plan required in subdivision (b), the board may consider the existing rate assistance programs authorized by the Public Utilities Commission for investor-owned water utilities pursuant to Section 739.8 of the Public Utilities Code.

(d) The plan may also include recommendations for other cost-effective methods of offering assistance to low-income water customers besides rate assistance, including billing alternatives, installation of water conservation devices, and leak repair. In considering other methods, the board may consider the Public Utilities Commission's "Assessment of Water Utility Low-Income Assistance Programs."

(e) (1) No later than February 1, 2018, the board shall report to the Legislature on its findings regarding the feasibility, financial stability, and desired structure of the program, including any recommendations for legislative action that may need to be taken.

(2) The requirement for submitting a report imposed under this subdivision is inoperative on February 1, 2022, pursuant to Section 10231.5 of the Government Code.

(3) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(f) For purposes of this section, the following terms have the following meanings:

(1) "Board" means the State Water Resources Control Board.

(2) "Low-income" means a household with income that is equal to or no greater than 200 percent of the federal poverty guideline level. For one-person households, program eligibility shall be based on two-person household guideline levels.

(3) "Program" means the Low-Income Water Rate Assistance Program.

*(Added by Stats. 2015, Ch. 662, Sec. 1. Effective January 1, 2016.)*

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## **CHAPTER 2.5. MISCELLANEOUS POWERS OF DEPARTMENT [205. - 347.]**

*(Heading of Chapter 2.5 added by Stats. 1956, 1st Ex. Sess., Ch. 52.)*

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## **Article 2. Surveys, Investigations, and Distribution of Water [225. - 238.]**

*(Article 2 enacted by Stats. 1943, Ch. 368.)*

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**§ 229.** The department, either independently or in cooperation with any person or any county, state, federal, or other agency, to the extent that funds are allocated therefor, shall investigate conditions of the quality of all waters within the state, including saline waters, coastal and inland, as related to all sources of pollution of whatever nature. The department may recommend any steps which might be taken to improve or protect the quality of such waters. The department shall coordinate its investigations fully with the board.

*(Amended by Stats. 1992, Ch. 711, Sec. 120. Effective September 15, 1992.)*

**§ 230.** The department, either independently or in cooperation with any person or any county, state, federal, or other agency, or upon the request of the State Water Resources Control Board, to the extent funds are allocated therefor, shall conduct surveys and investigations relating to the reclamation of water from wastes for beneficial purposes, including but not limited to the

determination of quantities of such water presently wasted, and possibilities of use of such water for recharge of underground storage or for agricultural or industrial uses.

*(Amended by Stats. 1992, Ch. 711, Sec. 121. Effective September 15, 1992.)*

**§ 231.** The department, either independently or in cooperation with any person or any county, state, federal or other agency, shall investigate and survey conditions of damage to quality of underground waters, which conditions are or may be caused by improperly constructed, abandoned or defective wells through the interconnection of strata or the introduction of surface waters into underground waters. The department shall report to the appropriate California regional water quality control board its recommendations for minimum standards of well construction in any particular locality in which it deems regulation necessary to protection of quality of underground water, and shall report to the Legislature from time to time, its recommendations for proper sealing of abandoned wells.

*(Amended by Stats. 1969, Ch. 482.)*

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### **Article 3. Proceedings to Prevent Waste or Unreasonable Use [275. - 275.]**

*(Article 3 enacted by Stats. 1943, Ch. 368.)*

**§ 275.** The department and board shall take all appropriate proceedings or actions before executive, legislative, or judicial agencies to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state.

*(Amended by Stats. 1971, Ch. 794.)*

### **Article 4. Waste from Artesian Wells [300. - 311.]**

*(Article 4 enacted by Stats. 1943, Ch. 368.)*

**§ 300.** For the purposes of this article, an artesian well is any artificial hole made in the ground through which water naturally flows from subterranean sources to the surface of the ground for any length of time.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 301.** For the purposes of this article, waste is the causing, suffering, or permitting any water flowing from an artesian well, to run either:

(a) Into any natural watercourse or channel, or into any bay or pond, unless the water is used thereafter for irrigation or domestic use.

(b) Into any street, road, or highway.

(c) Upon the land of any person or upon the public land of the United States or of the State, unless it is used thereon for irrigation, domestic use, or the propagation of fish.

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*(Enacted by Stats. 1943, Ch. 368.)*

**§ 302.** The use of any water flowing from an artesian well for the irrigation of land, whenever over 5 per cent of the water received on the land for irrigation purposes is permitted to escape from the land, is waste within the meaning of this article.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 303.** Nothing in this article prevents the running of artesian water into an artificial pond or storage-reservoir, if the water is used thereafter for a beneficial use.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 304.** A beneficial use under the next preceding section shall not exceed one tenth of one miner's inch of water per acre, perpetual flow, but the person using the water may cumulate that amount within any period of each year.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 305.** Any artesian well which is not capped or equipped with a mechanical appliance which will readily and effectively arrest and prevent the flow of any water from the well is a public nuisance.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 306.** The owner, tenant, or occupant of the land upon which a well which is a public nuisance under the next preceding section is situated, who causes, permits, or suffers such public nuisance to exist or continue is guilty of a misdemeanor.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 307.** Any person owning, possessing, or occupying any land upon which is situated an artesian well, who causes, suffers, or permits water unnecessarily to flow from the well or to go to waste is guilty of a misdemeanor.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 308.** Each day's continuance of waste constitutes a new offense.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 309.** Any person who violates any of the provisions of this article is punishable for each offense by a fine of not less than fifty dollars (\$50) and not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than six months, or by both.

*(Amended by Stats. 1983, Ch. 1092, Sec. 405. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)*

**§ 310.** All prosecutions for the violation of any of the provisions of this article shall be instituted in the superior court of the county where the well is situated.

*(Amended by Stats. 2003, Ch. 449, Sec. 37. Effective January 1, 2004.)*

**§ 311.** Any fine imposed under the provisions of this article may be collected as in other criminal cases, and the justice may also issue an execution upon the judgment therein rendered, which may be enforced and collected as in civil cases.

*(Enacted by Stats. 1943, Ch. 368.)*

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### **CHAPTER 2.7. WATER DIVERSION AND USE REPORTS [348. - 348.]**

*(Chapter 2.7 added by Stats. 2009, 7th Ex. Sess., Ch. 2, Sec. 2.)*

**§ 348.** (a) The department or the board may adopt emergency regulations providing for the electronic filing of reports of water extraction or water diversion or use required to be filed with the department or board under this code, including, but not limited to, any report required to be filed under Part 5.1 (commencing with Section 5100) or Part 5.2 (commencing with Section 5200) of Division 2 and any report required to be filed by a water right permittee or licensee.

(b) Emergency regulations adopted pursuant to this section, or any amendments thereto, shall be adopted by the department or the board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations or amendments to those regulations adopted under this section shall remain in effect until revised by the department or the board that adopted the regulations or amendments.

*(Amended by Stats. 2014, Ch. 347, Sec. 5. Effective January 1, 2015.)*

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### **CHAPTER 3.6. DEFERENCE TO DECISIONS BY LOCAL OR REGIONAL AGENCIES [380. - 387.]**

*(Chapter 3.6 added by Stats. 1982, Ch. 867, Sec. 2.)*

**§ 380.** The Legislature hereby finds and declares as follows:

(a) The various regions of the state differ widely in the availability of water supplies and in the need for water to meet beneficial uses.

(b) Decisions regarding operations to meet water needs can depend in part upon regional differences.

(c) Many water management decisions can best be made at a local or regional level, to the end that local and regional operational flexibility will maximize efficient statewide use of water supplies.

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(d) The authority granted by this chapter to local and regional public agencies, as defined in subdivision (a) of Section 65930 of the Government Code and not including federal agencies, is in furtherance of the policy declared in Section 2 of Article X of the California Constitution and in Section 109.  
*(Added by Stats. 1982, Ch. 867, Sec. 2.)*

**§ 381.** The authority of local or regional public agencies pursuant to this chapter shall control over any other provision of law which contains more stringent limitations on the authority of a particular public agency to serve water for use outside the agency, to the extent those other laws are inconsistent with the authority granted herein.  
*(Added by Stats. 1982, Ch. 867, Sec. 2.)*

**§ 382.** (a) Notwithstanding any other provision of law, every local or regional public agency authorized by law to serve water to the persons or entities within the service area of the agency may sell, lease, exchange, or otherwise transfer, for use outside the agency, either or both of the following:

- (1) Water that is surplus to the needs of the water users of the agency.
- (2) Water, the use of which is voluntarily foregone, during the period of the transfer, by a water user of the agency.

(b) This chapter does not prohibit or restrict the transfer of water or water rights by local or regional public agencies pursuant to other provisions of law.  
*(Amended by Stats. 1993, Ch. 188, Sec. 1. Effective January 1, 1994.)*

**§ 383.** For the purposes of this chapter, water that is surplus to the needs of the agency's water users shall mean any of the following:

(a) Water, to which the right is held by the agency pursuant to an appropriation made under the Water Commission Act or Division 2 (commencing with Section 1000), which the agency finds will be in excess of the needs of water users within the agency for the duration of the transfer.

(b) Water, to which the right is held by the agency pursuant to an appropriation made under the Water Commission Act or Division 2 (commencing with Section 1000), of which any water user agrees with the agency, upon mutually satisfactory terms, to forego use for the duration of the transfer.

(c) Water, to which the right is held by a water user within the agency pursuant to an appropriation made under the Water Commission Act or Division 2 (commencing with Section 1000) where the water user and the agency agree, upon mutually satisfactory terms, that the water user will forego use for the period of time specified in the agreement and that the agency shall act as agent for the water user to effect the transfer.

*(Added by Stats. 1982, Ch. 867, Sec. 2.)*

**§ 384.** Prior to serving water to any person for use outside the agency, the agency shall comply with all provisions of the general laws of this state relating to the transfer of water or water rights, including, but not limited to, procedural and substantive requirements governing any change in point of diversion, place of use, or purpose of use due to such transfer.

*(Added by Stats. 1982, Ch. 867, Sec. 2.)*

**§ 385.** No water may be transferred pursuant to this chapter for use within the boundaries of a local or regional public agency that furnishes the same water service to the transferee without the prior consent of that agency.

*(Added by Stats. 1982, Ch. 867, Sec. 2.)*

**§ 386.** The board may approve any change associated with a transfer pursuant to this chapter only if it finds that the change may be made without injuring any legal user of the water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and does not unreasonably affect the overall economy of the area from which the water is being transferred.

A petitioner requesting a change which is subject to this section shall pay to the board a fee which shall be in an amount determined by the board to cover the reasonable costs of the board in evaluating and processing the petition.

*(Added by Stats. 1982, Ch. 867, Sec. 2.)*

**§ 387.** Any agreement for the transfer of water under the provisions of this chapter shall be for a period not to exceed seven years unless a longer period of time is mutually agreed upon by the agency and the transferee.

*(Amended by Stats. 1986, Ch. 364, Sec. 1.)*

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## **CHAPTER 6. WATER REUSE [460. - 465.]**

*(Heading of Chapter 6 amended by Stats. 1994, Ch. 724, Sec. 1.)*

### **Article 1. Short Title [460. - 460.]**

*(Article 1 added by Stats. 1974, Ch. 1128.)*

**§ 460.** This chapter shall be known as and may be cited as the Water Reuse Law of 1974.

*(Amended by Stats. 1994, Ch. 724, Sec. 2. Effective January 1, 1995.)*

### **Article 2. Declaration of Policy [461. - 461.]**

*(Article 2 added by Stats. 1974, Ch. 1128.)*

**§ 461.** It is hereby declared that the primary interest of the people of the state in the conservation of all available water resources requires the maximum reuse of reclaimed water in the satisfaction of requirements for beneficial uses of water.

*(Amended by Stats. 1994, Ch. 724, Sec. 3. Effective January 1, 1995.)*

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### **Article 3. Action by the Department of Water Resources [462. - 465.]**

*(Article 3 added by Stats. 1974, Ch. 1128.)*

**§ 462.** The department shall conduct studies and investigations on the availability and quality of wastewater and the uses of reclaimed water for beneficial purposes, including, but not limited to, groundwater recharge, municipal and industrial use, irrigation use, and cooling for thermal electric powerplants.

*(Amended by Stats. 1994, Ch. 724, Sec. 4. Effective January 1, 1995.)*

**§ 463.** The department shall study and investigate the technology of the reuse of reclaimed water and further the development of the technology of the reclamation of water.

*(Amended by Stats. 1994, Ch. 724, Sec. 5. Effective January 1, 1995.)*

**§ 465.** The department may assist local agencies and public utilities providing water service in applying for, and in obtaining approval of, federal and state funding and permits for cost-effective water reclamation projects and shall confer and cooperate with the board during the application and approval process.

*(Added by Stats. 1990, Ch. 836, Sec. 2.)*

### **CHAPTER 7. WATER TRANSFER [470. - 484.]**

*(Chapter 7 added by Stats. 1986, Ch. 970, Sec. 1.)*

#### **Article 1. Short Title [470. - 470.]**

*(Article 1 added by Stats. 1986, Ch. 970, Sec. 1.)*

**§ 470.** This chapter shall be known as and may be cited as the Costa-Isenberg Water Transfer Act of 1986.

*(Added by Stats. 1986, Ch. 970, Sec. 1.)*

#### **Article 2. Declaration of Policy [475. - 475.]**

*(Article 2 added by Stats. 1986, Ch. 970, Sec. 1.)*

**§ 475.** The Legislature hereby finds and declares that voluntary water transfers between water users can result in a more efficient use of water, benefiting both the buyer and the seller.

The Legislature further finds and declares that transfers of surplus water on an intermittent basis can help alleviate water shortages, save capital outlay development costs, and conserve water and energy.

The Legislature further finds and declares that it is in the public interest to conserve all available water resources, and that this interest requires the coordinated assistance of state agencies for voluntary water transfers to allow more intensive use of developed water resources in a manner that fully protects

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the interests of other entities which have rights to, or rely on, the water covered by a proposed transfer.

*(Added by Stats. 1986, Ch. 970, Sec. 1.)*

### **Article 3. State Assistance [480. - 484.]**

*(Article 3 added by Stats. 1986, Ch. 970, Sec. 1.)*

**§ 480.** The department shall establish an ongoing program to facilitate the voluntary exchange or transfer of water and implement the various state laws that pertain to water transfers. The department shall seek to facilitate these transactions only if the water to be transferred is already developed and being diverted from a stream for beneficial use or has been conserved.

*(Added by Stats. 1986, Ch. 970, Sec. 1.)*

**§ 481.** The department shall create and maintain a list of entities seeking to enter into water supply transfers, leases, exchanges, or other similar arrangements. In addition, the department shall maintain a list of the physical facilities which may be available to carry out water supply transfers.

*(Added by Stats. 1986, Ch. 970, Sec. 1.)*

**§ 482.** The department shall prepare a water transfer guide which shall include, but not be limited to, all of the following:

(a) A review of existing and appropriate state and federal laws that pertain to water transfers, water markets, or water rights.

(b) A list of persons or public agencies throughout the state involved in water management who could be helpful to those seeking assistance to transfer water.

(c) Information and resources which could be used to identify potential third-party impacts and mitigation alternatives, including economic or legal issues related to the transfer of water, and environmental issues, including, but not limited to, those described in Section 1018.

(d) A description of the services available to water users from the department.

*(Amended by Stats. 2013, Ch. 387, Sec. 13. Effective January 1, 2014.)*

**§ 483.** The department shall consult and coordinate its activities with other state boards, departments, agencies, or offices whose assistance may be desirable or necessary in carrying out the purposes of this chapter.

*(Added by Stats. 1986, Ch. 970, Sec. 1.)*

**§ 484.** (a) The temporary transfer of any water or water right that otherwise would have been consumptively used or stored by the transferor in the absence of the temporary transfer, does not in any way prejudice the transferor's right to the use of the water in the future.

(b) "Consumptively used," for purposes of this section, means the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.

*(Added by Stats. 1991, 1st Ex. Sess., Ch. 12, Sec. 2. Effective October 9, 1991.)*

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## **DIVISION 2. WATER [1000. - 5976.]**

*(Division 2 enacted by Stats. 1943, Ch. 368.)*

### **PART 1. GENERAL PROVISIONS [1000. - 1126.2.]**

*(Part 1 enacted by Stats. 1943, Ch. 368.)*

#### **CHAPTER 1. DEFINITIONS AND INTERPRETATION OF DIVISION [1000. - 1018.]**

*(Chapter 1 enacted by Stats. 1943, Ch. 368.)*

**§ 1000.** As used in this division, "water" includes the term "use of water."

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1001.** Nothing in this division shall be construed as giving or confirming any right, title, or interest to or in the corpus of any water.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1002.** This division shall not be held to bestow upon any person, except as expressly provided in it, any right where no such right existed prior to the time this division takes effect.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1003.** As used in this division, "Water Commission Act" means Chapter 586, Statutes of 1913, as amended.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1004.** As used in this division, "useful or beneficial purposes" shall not be construed to mean the use in any one year of more than 2½ acre-feet of water per acre in the irrigation of uncultivated areas of land not devoted to cultivated crops.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1005.** Nothing in this division shall be construed as depriving any city, city and county, municipal water district, irrigation district, or lighting district of the benefit of any law heretofore or hereafter passed for their benefit in regard to the appropriation or acquisition of water. Any right to the water of any stream which flows along a boundary of the State and which is the subject of an interstate compact to which the State is a party, to the extent such right relates to quantities of water which the United States has, under the authority of an act of Congress, contracted to deliver to any municipal corporation, political

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subdivision, or public district in the State, from storage constructed by the United States on any such stream, shall not be subject to any requirement or limitation provided by law relating to the time within which the construction of works for the use of such water shall be commenced, carried on, or completed, or within which such water shall be put to use, or relating to the continuity of use of such water; and water contracted to be delivered from such stream, shall be reserved to the contractor therefor without diminution by reason of the contractor's failure to apply such water to use during any period, and shall not be subject to appropriation by any other than such contractor.

*(Amended by Stats. 1943, Ch. 230.)*

**§ 1005.1.** Cessation of or reduction in the extraction of ground water by the owner of a right to extract, as the result of the use of an alternate supply of water from a nontributary source, shall be and is deemed equivalent to, and for purposes of establishing and maintaining any right to extract the ground water shall be construed to constitute, a reasonable beneficial use of the ground water to the extent and in the amount that water from the alternate source is applied to reasonable beneficial use, not exceeding, however, the amount of such reduction. Any such user of water from an alternate nontributary source who seeks the benefit of this section, shall file with the board, on or before December 31st of each calendar year, a statement of the amount of water from such source so applied to reasonable beneficial use pursuant to the provisions of this section during the next preceding water year (November 1st to October 31st), and such user cannot claim the benefit of this section for any water year for which such statement is not so filed.

"Ground water," for the purpose of this section and of Sections 1005.2 and 1005.4, means water beneath the surface of the ground, whether or not flowing through known and definite channels.

The term "nontributary source," as used in this section, shall be deemed to include water imported from another watershed, or water conserved and saved in the watershed by a water conservation plan or works without which such water of the same watershed would have wasted, or would not have reached the underground source of supply of the owner relying upon this section.

*(Amended by Stats. 1976, Ch. 581.)*

**§ 1005.2.** Cessation of or reduction in the extraction of ground water, to permit the replenishment of such ground water by the use of water from an alternate nontributary source, is hereby declared to be a reasonable beneficial use of the ground water to the extent and in the amount that water from such alternate source is applied to beneficial use, not exceeding, however, the amount of such reduction. No lapse, reduction or loss of any right in ground water, shall occur under such conditions. Any such user of water from an alternate source who seeks the benefit of this Section 1005.2 with respect to

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the use of such water occurring prior to the effective date of this section, shall file with the board, within ninety (90) days from said effective date, a statement of the amounts of reduction in the extraction of ground water as the result of water from said alternate source having been so applied to reasonable beneficial use prior to said effective date to permit the replenishment of such ground water and said amounts shall be segregated and shown for each water year (November 1st to October 31st) during which such use occurred prior to the effective date of this section. Any such user of water from an alternate source who seeks the benefit of this Section 1005.2 with respect to the use of such water occurring subsequent to the effective date of this section, shall file with the board, on or before December 31st of each calendar year, a statement of the amount of reduction in the extraction of ground water as the result of water from said alternate source having been so applied to reasonable beneficial use during the next preceding water year (November 1st to October 31st) to permit the replenishment of such ground water. Such user cannot claim the benefit of this section for any water year for which such statement is not so filed.

The provisions of this section apply only as to the cessation of, or reduction in, the extraction of ground water within that area in this state defined by the exterior boundaries of the Counties of San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Imperial, Riverside, and San Bernardino.

The term “nontributary source” as used in this section shall be deemed to include water imported from another watershed or water conserved and saved in the watershed by a water conservation plan or works without which such water of the same watershed would have wasted, or would not have reached the underground source of supply of the owner relying upon this section. *(Amended by Stats. 1972, Ch. 274.)*

**§ 1005.3.** During the pendency of an action to adjudicate substantially all water rights in a ground water basin situated in whole or in part within the Tehachapi-Cummings County Water District in Kern County, and until the date of judgment therein becomes final, which finality may be subject to any reserved jurisdiction of the court, the failure by any owner of water rights in and to such ground water basin to pump or extract therefrom the full quantity of water representing such water rights which he may be determined to have had as of the date of commencement of the action, shall not result in a loss of any portion of such water rights. The provisions of this section shall apply to any such failure to pump or extract in any water year, calendar year, or other year ending after the effective date of this section, whether or not said action was commenced prior to that effective date.

This special provision is necessary because there are special and peculiar circumstances applicable to the ground water basins lying wholly or partially

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within the Tehachapi-Cummings County Water District. There are three such ground water basins, commonly referred to as the Tehachapi Basin, the Brite Basin and the Cummings Basin. The alluvial fill in each of said basins is very shallow when contrasted to most other ground water basins in this state. It is necessary to induce those pumpers who can possibly do so to reduce their pumping from the basins if sufficient ground water reserves are to be maintained for preservation of the existing economy until supplemental water is available from the State Water Facilities. Actions to adjudicate substantially all water rights have been filed as to each of those basins.

*(Added by Stats. 1967, Ch. 833.)*

**§ 1005.4.** (a) Cessation of or reduction in the extraction of ground water, to permit the replenishment of such ground water by the use of water from an alternate nontributary source, is hereby declared to be a reasonable beneficial use of the ground water to the extent and in the amount that water from such alternate source is applied to beneficial use, not exceeding, however, the amount of such reduction. No lapse, reduction or loss of any right in ground water, shall occur under such conditions.

(b) Any such user of water from an alternative source may file with the board, on or before December 31st of each calendar year, a statement of the amount of reduction in the extraction of groundwater as a result of water from the alternative source having been so applied to reasonable beneficial use during the next preceding water year (October 1st to September 30th) to permit replenishment of such groundwater. However, failure to file such a statement shall in no way affect the right of a user to claim the benefit of this section.

(c) The provisions of this section apply only as to the cessation of, or reduction in, the extraction of ground water within that area in this state defined by the exterior boundaries of every county, except the Counties of San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Imperial, Riverside, and San Bernardino.

(d) The term “nontributary source,” as used in this section, shall be deemed to include water imported from another watershed or water conserved and saved in the watershed by a water conservation plan or works without which such water of the same watershed would have wasted, or would not have reached the underground source of supply of the owner relying upon this section.

*(Amended by Stats. 1981, Ch. 567, Sec. 1. Effective September 19, 1981.)*

**§ 1006.** Nothing in this division affects or limits in any manner whatsoever the right or power of any municipality which, prior to December 19, 1914, had appropriated or acquired water for municipal purposes, to use, sell, or otherwise dispose of such water either within or without its limits for domestic, irrigation, or other purposes in accordance with laws in effect on that date.

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*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1007.** Nothing in this division shall be construed to deprive the State or any city, city and county, municipal water district, irrigation district, lighting district, political subdivision, or any person of any rights to acquire property by eminent domain proceedings.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1008.** Nothing in this division shall be construed as depriving any person of the right of appeal conferred under the laws of this State.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1009.** Any supplier of water in this state for municipal use, including the state, or any city, county, city and county, district, individual, partnership, corporation, or any other entity, may undertake a water conservation program to reduce water use and may require, as a condition of new service, that reasonable water-saving devices and water reclamation devices be installed to reduce water use.

*(Added by Stats. 1976, Ch. 709.)*

**§ 1009.5.** (a) A water district and the district attorney of any county in which the water district is located may enter into an agreement authorizing the attorney for the water district to act as a special prosecutor appointed by and under the supervision and direction of the district attorney for the purpose of prosecuting a violation of an ordinance of the district or a violation of a statute that is a misdemeanor or an infraction, or a violation of a resolution or ordinance adopted pursuant to Section 375, subject to all of the following limitations:

(1) The ordinance, resolution, or statute relates to water pollution, including waste water and stormwater, or to water conservation.

(2) The district attorney shall prescribe the scope of, and any limitations on, the subpoena power of the attorney for the water district.

(3) The district attorney may designate any ordinance, resolution, or statute that the attorney for the water district is authorized to prosecute.

(b) A water district, for purposes of this section, means a water district as defined in Section 20200.

*(Added by Stats. 1992, Ch. 766, Sec. 1. Effective January 1, 1993.)*

**§ 1010.** (a) (1) The cessation of, or reduction in, the use of water under any existing right regardless of the basis of right, as the result of the use of recycled water, desalinated water, or water polluted by waste to a degree which unreasonably affects the water for other beneficial uses, is deemed equivalent to, and for purposes of maintaining any right shall be construed to constitute, a reasonable beneficial use of water to the extent and in the amount that the

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recycled, desalinated, or polluted water is being used not exceeding, however, the amount of such reduction.

(2) No lapse, reduction, or loss of any existing right shall occur under a cessation of, or reduction in, the use of water pursuant to this subdivision, and, to the extent and in the amount that recycled, desalinated, or polluted water is used in lieu of water appropriated by a permittee pursuant to Chapter 6 (commencing with Section 1375) of Part 2, the board shall not reduce the appropriation authorized in the user's permit.

(3) The use of recycled, desalinated, or polluted water constitutes good cause under Section 1398 to extend the period specified in a permit for application of appropriated water to beneficial use to the extent and in the amount that recycled, desalinated, or polluted water is used. The extension by the board shall be granted upon the same terms as are set forth in the user's permit, and for a period sufficient to enable the permittee to perfect his appropriation, while continuing to use recycled, desalinated, or polluted water.

(4) The board, in issuing a license pursuant to Article 3 (commencing with Section 1610) of Chapter 9 of Part 2, shall not reduce the appropriation authorized by permit, to the extent and in the amount that reduction in a permittee's use, during the perfection period, including any extension as provided in this section, has resulted from the use of recycled, desalinated, or polluted water in lieu of the permittee's authorized appropriation.

(5) The board may require any user of water who seeks the benefit of this section to file periodic reports describing the extent and amount of the use of recycled, desalinated, or polluted water. To the maximum extent possible, the reports shall be made a part of other reports required by the board relating to the use of water.

(6) For purposes of this section, the term "recycled water" has the same meaning as in Division 7 (commencing with Section 13000).

(b) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of the use of recycled, desalinated, or polluted water as described in subdivision (a), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

*(Amended by Stats. 1995, Ch. 28, Sec. 12. Effective January 1, 1996.)*

**§ 1011.** (a) When any person entitled to the use of water under an appropriative right fails to use all or any part of the water because of water conservation efforts, any cessation or reduction in the use of the appropriated water shall be deemed equivalent to a reasonable beneficial use of water to the extent of the cessation or reduction in use. No forfeiture of the appropriative

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right to the water conserved shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914.

The board may require that any user of water who seeks the benefit of this section file periodic reports describing the extent and amount of the reduction in water use due to water conservation efforts. To the maximum extent possible, the reports shall be made a part of other reports required by the board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this section.

For purposes of this section, the term “water conservation” shall mean the use of less water to accomplish the same purpose or purposes of use allowed under the existing appropriative right. Where water appropriated for irrigation purposes is not used as a result of temporary land fallowing or crop rotation, the reduced usage shall be deemed water conservation for purposes of this section. For the purpose of this section, “land fallowing” and “crop rotation” mean those respective land practices, involving the nonuse of water, used in the course of normal and customary agricultural production to maintain or promote the productivity of agricultural land.

(b) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of water conservation efforts as described in subdivision (a), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

(c) Notwithstanding any other provision of law, upon the completion of the term of a water transfer agreement, or the right to the use of that water, that is available as a result of water conservation efforts described in subdivision (a), the right to the use of the water shall revert to the transferor as if the water transfer had not been undertaken.

*(Amended by Stats. 1999, Ch. 938, Sec. 2. Effective January 1, 2000.)*

**§ 1011.5.** (a) The Legislature hereby finds and declares that the growing water needs of the state require the use of water in an efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water. The Legislature further declares that it is the policy of this state to encourage conjunctive use of surface water and groundwater supplies and to make surface water available for other beneficial uses. The Legislature recognizes that the substantial investments that may be necessary to implement and maintain a conjunctive use program require certainty in the continued right to the use of alternate water supplies.

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(b) When any holder of an appropriative right fails to use all or any part of the water as a result of conjunctive use of surface water and groundwater involving the substitution of an alternate supply for the unused portion of the surface water, any cessation of, or reduction in, the use of the appropriated water shall be deemed equivalent to a reasonable and beneficial use of water to the extent of the cessation of, or reduction in, use, and to the same extent as the appropriated water was put to reasonable and beneficial use by that person. No forfeiture of the appropriative right to the water for which an alternate supply is substituted shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914.

The state board may require any holder of an appropriative right who seeks the benefit of this section to file periodic reports describing the extent and amount of the reduction in water use due to substitution of an alternate supply. To the maximum extent possible, the reports shall be made a part of other reports required by the state board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this section.

(c) Substitution of an alternate supply may be made only if the extraction of the alternate supply conforms to all requirements imposed pursuant to an adjudication of the groundwater basin, if applicable, and meets one of the following conditions:

(1) Except as specified in paragraph (2), is from a groundwater basin for which the operating safe yield is not exceeded prior to the extraction of the alternate supply and does not cause the operating safe yield of the groundwater basin from which the alternate supply is obtained to be exceeded.

(2) Is from the Eastern San Joaquin County Basin, as described on pages 38 and 39 of the Department of Water Resources Bulletin No. 118-80, for which the operating safe yield is exceeded prior to the extraction of the alternative supply, if all of the following requirements are met:

(A) The conjunctive use program is operated in accordance with a local groundwater management program that complies with the requirements of this section.

(B) The groundwater management program establishes requirements for the extraction of groundwater and is approved by a joint powers authority that meets the requirements of subparagraph (C).

(C) The joint powers authority includes one or more of the water agencies overlying the contemplated points of groundwater extraction and one or more of the water agencies that will share in the benefits to be derived from the local groundwater management program.

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(D) By either of the following methods, the overdraft of the groundwater basin underlying the point of extraction has been reduced prior to the commencement of extraction:

(i) Elimination of a volume of existing groundwater extractions in excess of the proposed new extraction.

(ii) Recharge of the groundwater basin with a volume of water in excess of the proposed new extraction.

(E) The operation of that conjunctive use program ensures that the overdraft of the groundwater basin continues to be reduced.

(d) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of conjunctive use of surface water and groundwater involving substitution of an alternate supply, as described in subdivisions (b) and (c), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

(e) As used in this section, "substitution of an alternate supply" means replacement of water diverted under an appropriative right by the substitution of an equivalent amount of groundwater.

(f) This section does not apply to the Santa Ana River watershed.

(g) This section does not apply in any area where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses established in a water quality control plan adopted or approved by the state board pursuant to, and to the extent authorized by, Section 13170 or 13245, which designates areas where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses.

(h) This section shall not be construed to increase or decrease the jurisdiction of the state board over groundwater resources, or to confer on the state board jurisdiction over groundwater basins over which it does not have jurisdiction pursuant to other provisions of law.

*(Amended (as added by Stats. 1992, Ch. 779, Sec. 1) by Stats. 2003, Ch. 740, Sec. 3. Effective January 1, 2004.)*

**§ 1012.** Notwithstanding any other provision of law, where any person, public agency, or agency of the United States undertakes any water conservation effort, either separately or jointly with others entitled to delivery of water from the Colorado River under contracts with the United States, which results in reduced use of Colorado River water within the Imperial Irrigation District, no forfeiture, diminition, or impairment of the right to use the water conserved shall occur, except as set forth in the agreements between the parties and the United States.

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*(Added by Stats. 1984, Ch. 429, Sec. 1.)*

**§ 1013.** (a) The Imperial Irrigation District, acting under a contract with the United States for diversion and use of Colorado River water or pursuant to the California Constitution or to this chapter, or complying with an order of the Secretary of the Interior, a court, or the board, to reduce through conservation measures, the volume of the flow of water directly or indirectly into the Salton Sea, shall not be held liable for any effects to the Salton Sea or its bordering area resulting from the conservation measures.

(b) For the purposes of this section, and during the term of the Quantification Settlement Agreement as defined in subdivision (a) of Chapter 617 of the Statutes of 2002, "land fallowing conservation measures" means the generation of water to be made available for transfer or for environmental mitigation purposes by fallowing land or removing land from agricultural production regardless of whether the fallowing or removal from agricultural production is temporary or long term, and regardless of whether it occurs in the course of normal and customary agricultural production, if both of the following apply:

(1) The measure is part of a land fallowing conservation plan that includes mitigation provisions adopted by the Board of Directors of the Imperial Irrigation District.

(2) Before the Imperial Irrigation District adopts a land fallowing conservation plan, the district shall consult with the Board of Supervisors of the County of Imperial and obtain the board's assessment of whether the proposed land fallowing conservation plan includes adequate measures to avoid or mitigate unreasonable economic or environmental impacts in the County of Imperial.

(c) In order to minimize impacts on the environment, during the term of the Quantification Settlement Agreement and for six years thereafter, in any evaluation or assessment of the Imperial Irrigation District's use of water, it shall be conclusively presumed that any water conserved, or used for mitigation purposes, through land fallowing conservation measures has been conserved in the same volume as if conserved by efficiency improvements, such as by reducing canal seepage, canal spills, or surface or subsurface runoff from irrigation fields.

(d) If a party to the Quantification Settlement Agreement engages in water efficiency conservation measures or land fallowing conservation measures to carry out a Quantification Settlement Agreement transfer or to mitigate the environmental impacts of a Quantification Settlement Agreement transfer, there may be no forfeiture, diminution, or impairment of the right of that party to use of the water conserved.

(e) During the period that the Quantification Settlement Agreement is in effect and the Imperial Irrigation District is meeting its water delivery obligations under the Quantification Settlement Agreement and its water delivery obligations under subdivision (c) of Section 2081.7 of the Fish and Game Code, no person or local agency, as defined in Section 21062 of the Public Resources Code, may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily, until the district has adopted a resolution offering to make conserved Colorado River water available.

(f) During the initial term in which the Quantification Settlement Agreement is in effect, any water transferred by the Imperial Irrigation District shall be subject to an ecosystem restoration fee established by the Department of Fish and Game, in consultation with the board, to cover the proportional impacts to the Salton Sea of the additional water transfer. The fee shall not exceed 10 percent of the amount of any compensation received for the transfer of the water. The fee shall be deposited in the Salton Sea Restoration Fund. This fee shall not apply to the following transfers:

(1) Transfers to meet water delivery obligations under the Quantification Settlement Agreement and related agreements, as defined in that agreement.

(2) Transfers to comply with subdivision (c) of Section 2081.7 of the Fish and Game Code.

(3) Transfers pursuant to a Defensive Transfer Agreement as defined in the Agreement for Acquisition of Conserved Water between the Imperial Irrigation District and the Metropolitan Water District of Southern California.

(g) Subdivisions (c), (d), (e), and (f) shall not become operative unless the parties have executed the Quantification Settlement Agreement on or before October 12, 2003.

(h) This section may not be construed to exempt the Imperial Irrigation District from any requirement established under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

*(Amended by Stats. 2005, Ch. 22, Sec. 208. Effective January 1, 2006.)*

**§ 1014.** The transfer of water, or the offer of water for transfer, shall not cause, or be the basis for, a forfeiture, abandonment, or modification of any water right, contract right, or other right to the use of that water. An offer of water for transfer, contract negotiations, or a transfer agreement shall not be used as evidence of waste or unreasonable use, or of cessation of use, of the water made available for transfer.

*(Added by Stats. 1999, Ch. 938, Sec. 3. Effective January 1, 2000.)*

**§ 1015.** During the term of a temporary change, as defined in Section 1728, if an enforcement action or other proceeding is commenced that alleges that the use of water violates Section 2 of Article X of the California Constitution,

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Sections 100, 101, 1410, and 1675, or any other legislative, administrative, or judicial limitation on the water that is subject to that water transfer and the water involved is, at the time of the alleged violation, subject to a water transfer, the determination of the alleged violation shall be based on an assessment of the transferee's use of transferred water. If a transferee's right to use transferred water is divested, in whole or in part, on the basis of the transferee's abandonment, forfeiture, waste, or unreasonable use of the transferred water, the divested portion of the right shall revert immediately to the transferor.

*(Added by Stats. 1999, Ch. 938, Sec. 4. Effective January 1, 2000.)*

**§ 1016.** (a) At the conclusion of the term of a water transfer agreement, all rights in, and the use of, the water subject to the agreement revert back to the transferor.

(b) After the conclusion of the term of a water transfer agreement, the transferee or any beneficiary of the transfer shall not do either of the following:

(1) Bring any claim for a continuation of the water supply made available by the agreement.

(2) Claim any right to a continued supply of water as a result of the transfer, based on reliance, estoppel, intervening public use, prescription, water shortage emergency, or unforeseen or unforeseeable increases in demand, or any other cause.

*(Added by Stats. 1999, Ch. 938, Sec. 5. Effective January 1, 2000.)*

**§ 1017.** The beneficial use of water pursuant to a transfer or exchange authorized pursuant to Chapter 6.6 (commencing with Section 1435) of, Chapter 10 (commencing with Section 1700) of, Chapter 10.5 (commencing with Section 1725) of, Part 2, or any other provision of law, shall constitute a beneficial use of water by the holder of the permit, license, water right, or other entitlement for use that is the basis for the transfer or exchange, and shall not affect any determination or forfeiture applicable to water appropriated pursuant to the Water Commission Act or this code or water appropriated prior to December 19, 1914.

*(Added by Stats. 1999, Ch. 938, Sec. 6. Effective January 1, 2000.)*

**§ 1018.** When agricultural lands are being idled in order to provide water for transfer pursuant to this division, and an amount of water is determined to be made available by that idling, landowners shall be encouraged to cultivate or retain nonirrigated cover crops or natural vegetation to provide waterfowl, upland game bird, and other wildlife habitat, provided that all other water transfer requirements are met.

*(Added by Stats. 2013, Ch. 387, Sec. 14. Effective January 1, 2014.)*

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**CHAPTER 1.5. WATER LEASES [1020. - 1031.]**

*(Chapter 1.5 added by Stats. 1991, Ch. 847, Sec. 3.)*

**§ 1020.** Water may be leased for a period not to exceed five years to assist water conservation efforts pursuant to the terms and conditions of this chapter. The terms and conditions of this chapter are not applicable to water leases or transfers governed by other provisions of law.

*(Added by Stats. 1991, Ch. 847, Sec. 3.)*

**§ 1021.** (a) The water subject to a water lease agreement shall be water that is subject to a water right of the lessor. The amount of water leased shall not exceed 25 percent of the water that would have been applied or stored by the lessor in the absence of the lease agreement in any given hydrological year.

(b) Each lease agreement shall include enforceable terms which will ensure that the water lease will not injure any legal user of water and will not unreasonably affect fish, wildlife, or other instream beneficial uses.

(c) This chapter applies only to surface water appropriated pursuant to the Water Commission Act (Chapter 586 of the Statutes of 1913, as amended) or this code, or to water appropriated prior to December 19, 1914.

*(Added by Stats. 1991, Ch. 847, Sec. 3.)*

**§ 1022.** If the water subject to the lease is held by a water district, a water company, or a mutual water company, hereafter collectively referred to as the district, the following provisions apply:

(a) The governing body of the district may, by a resolution adopted and entered in its minutes, determine that the district should lease water pursuant to this chapter, or, if otherwise required by law, determine that an election should be held to lease water pursuant to this chapter. The district shall administer any water lease and determine whether water is in excess of the needs of the district and is available for a lease.

(b) Any water lease administered by the district shall include provisions to achieve all of the following:

(1) Establish a schedule for district water users to provide written notice of the intention to participate in a water lease.

(2) Establish a minimum price for the water available for leasing to maintain the financial integrity of the district and enter into leases for that water at market values at or above the minimum price.

(3) Annually distribute the net monetary proceeds to water users in the district who have participated in the water leases, according to district water allocation policies, after first deducting district costs. These costs include, but are not limited to, the cost of the water, whether or not water is delivered, the costs of conveyance, distribution and development facilities, lease administration, and other appropriate district costs apportioned to water users

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in the district who forego the use of district water to participate in the water lease.

(c) Participation in a water lease administered by the district pursuant to this section is deemed to be a public service generally provided by the public body or board for purposes of paragraph (3) of subdivision (a) of Section 1091.5 of the Government Code.

*(Amended by Stats. 1992, Ch. 56, Sec. 1. Effective May 14, 1992.)*

**§ 1024.** (a) Nothing in this chapter authorizes the sale of any water right or the modification of any water right or contract.

(b) No right in any water, water contract, or water right shall be acquired by a use permitted under this chapter.

(c) (1) When any person entitled to the use of water under an appropriative right fails to use all or any part of the water because of water conservation efforts and leases that conserved water under this chapter, any such cessation of, or reduction in, the use of the appropriated water that is leased is deemed equivalent to a reasonable beneficial use of water to the extent of that cessation of, or reduction in, use. No forfeiture of the appropriative right to the water conserved shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act (Chapter 586 of the Statutes of 1913, as amended) or this code, or to water appropriated prior to December 19, 1914.

(2) The state board may require any lessor of water who seeks the benefit of this chapter to file periodic reports describing the extent and amount of the reduction in water use due to water conservation efforts. To the maximum extent possible, the reports shall be made a part of other reports required by the state board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this chapter.

(3) For purposes of this chapter, “water conservation” means the use of less water to accomplish the same purpose or purposes of use allowed under the existing appropriative right. Where water appropriated for irrigation purposes is not used by reason of land fallowing or crop rotation, the reduced usage shall be deemed water conservation for purposes of this section.

*(Added by Stats. 1991, Ch. 847, Sec. 3.)*

**§ 1024.5.** This chapter does not limit any review of the lessee’s use of the leased water.

*(Added by Stats. 1991, Ch. 847, Sec. 3.)*

**§ 1025.** If the lessor or lessee is a water district, the water lessor shall file a notice with the state board of the water lease agreement and include in the notice all of the following:

(a) A copy of the lease agreement.

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(b) Any water permit or license number.

(c) A description of the environmental conditions in the lease, permit, and license which protect fish and wildlife.

(d) A statement of how the lease will assist water conservation efforts of the lessor.

(e) An agreement undertaken by the lessor and the lessee which specifies how the environmental protection terms and conditions in the permit, license, or lease, and the applicable conditions established pursuant to Section 1029 for the permit, license, or other water right, will be complied with for the duration of the lease.

*(Added by Stats. 1991, Ch. 847, Sec. 3.)*

**§ 1025.5.** (a) If both the lessor and lessee are private parties, the lessor shall file an application with the board for approval of the lease agreement and shall include in the application all of the following:

(1) The information and materials described in subdivisions (a) to (e), inclusive, of Section 1025.

(2) Other information that the state board determines is necessary to review the application.

(3) The application fee set pursuant to Section 1525.

(b) The board, after providing notice and opportunity for a hearing, may approve the lease if, in the judgment of the board, the lease would not operate to injure the legal users of water or unreasonably affect fish, wildlife, or other instream beneficial uses.

*(Amended by Stats. 2003, Ch. 741, Sec. 79. Effective January 1, 2004.)*

**§ 1025.7.** Water leases pursuant to this chapter are not subject to Chapter 10 (commencing with Section 1700) or Chapter 10.5 (commencing with Section 1725) of Part 2.

*(Added by Stats. 1991, Ch. 847, Sec. 3.)*

**§ 1026.** The lead agency shall not approve a water lease until 30 days after the board provides written public notice, including notice by personal delivery or registered mail to legal users of water which may be affected by the lease, as identified by the board, the Department of Fish and Wildlife, and any party requesting special notice of water leases pursuant to this chapter. The water lessor shall pay a reasonable fee, in an amount determined by the state board, for the cost of providing the notice.

*(Amended by Stats. 2015, Ch. 683, Sec. 42. Effective January 1, 2016.)*

**§ 1027.** (a) Any water lease agreement entered into pursuant to this chapter involving the transfer of water from the Sacramento-San Joaquin Delta shall provide outflow consistent with the carriage water requirements determined by the department to be necessary for the transfer of the water subject to the

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lease to maintain the water quality which would exist in the delta without the transfer undertaken in connection with the water lease.

(b) Any water lease agreement providing for the lease of water from a lessor north of the Sacramento/San Joaquin Delta to a lessee south of the Sacramento/San Joaquin Delta shall provide for an amount of water for delta salt water repulsion and environmental purposes as administratively prescribed by the state board in proportion to all similar requirements for delta exports.

*(Added by Stats. 1991, Ch. 847, Sec. 3.)*

**§ 1028.** In any proceeding pursuant to Section 1029, the court shall determine issues relating to the lease and the effects of the water transfer pursuant to the lease on the legal users of water and on fish and wildlife, but any request or petition to permanently change the water right which may be subject to the lease shall be heard in a separate proceeding.

*(Added by Stats. 1991, Ch. 847, Sec. 3.)*

**§ 1029.** Division 13 (commencing with Section 21000) of the Public Resources Code applies to water lease agreements authorized by this chapter. For purposes of that division, the lessor is the lead agency, except that if the lessor is a private party and the lessee is a water district, the lessee is the lead agency. If both the lessor and the lessee are private parties, the state board is the lead agency.

*(Added by Stats. 1991, Ch. 847, Sec. 3.)*

**§ 1030.** During the term of the water lease, the state board shall monitor the lease, as appropriate. The state board shall initiate proceedings, if appropriate, to enforce the terms and conditions of water leases, and permits and licenses or water use authority to ensure that the water lease does not operate to injure any legal user of the water or unreasonably affect fish, wildlife, or other instream beneficial uses.

*(Added by Stats. 1991, Ch. 847, Sec. 3.)*

**§ 1031.** A water lease pursuant to this chapter shall not take effect until the first annual fee, set pursuant to Section 1525, is paid, and the lease shall not continue in effect in any subsequent year unless the annual fee for that year is paid.

*(Added by Stats. 2003, Ch. 741, Sec. 80. Effective January 1, 2004.)*

## **CHAPTER 2. ADMINISTRATIVE PROVISIONS GENERALLY [1050. - 1060.]**

*(Chapter 2 enacted by Stats. 1943, Ch. 368.)*

**§ 1050.** This division is hereby declared to be in furtherance of the policy contained in Section 2 of Article X of the California Constitution and in all respects for the welfare and benefit of the people of the state, for the improvement of their prosperity and their living conditions, and the board and

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the department shall be regarded as performing a governmental function in carrying out the provisions of this division.

*(Amended by Stats. 1979, Ch. 373.)*

**§ 1051.** The board for the purpose of this division may:

(a) Investigate all streams, stream systems, portions of stream systems, lakes, or other bodies of water.

(b) Take testimony in regard to the rights to water or the use of water thereon or therein.

(c) Ascertain whether or not water heretofore filed upon or attempted to be appropriated is appropriated under the laws of this State.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1051.5.** In furtherance of its powers and duties under Parts 2 (commencing with Section 1200) and 3 (commencing with Section 2000) of this division, the board may supervise trial distribution of water in accordance with agreements and court orders therefor.

*(Amended by Stats. 1967, Ch. 284.)*

**§ 1052.** (a) The diversion or use of water subject to this division other than as authorized in this division is a trespass.

(b) The Attorney General, upon request of the board, shall institute in the superior court in and for any county where the diversion or use is threatened, is occurring, or has occurred an action for the issuance of injunctive relief as may be warranted by way of temporary restraining order, preliminary injunction, or permanent injunction.

(c) Any person or entity committing a trespass as defined in this section may be liable in an amount not to exceed the following:

(1) If the unauthorized diversion or use occurs in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions, the sum of the following:

(A) One thousand dollars (\$1,000) for each day in which the trespass occurs.

(B) Two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in excess of that diverter's water rights.

(2) If the unauthorized diversion or use is not described by paragraph (1), five hundred dollars (\$500) for each day in which the unauthorized diversion or use occurs.

(d) Civil liability for a violation of this section may be imposed by the superior court or the board as follows:

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(1) The superior court may impose civil liability in an action brought by the Attorney General, upon request of the board, to impose, assess, and recover any sums pursuant to subdivision (c). In determining the appropriate amount, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(2) The board may impose civil liability in accordance with Section 1055.

(e) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

(f) The remedies prescribed in this section are cumulative and not alternative.

*(Amended by Stats. 2014, Ch. 3, Sec. 9. Effective March 1, 2014.)*

**§ 1053.** A full and accurate record of business or acts performed or of testimony taken by the board and the department in pursuance of the provisions of this division shall be kept and be placed on file in the office of the board or the department, as the case may be.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1054.** The board and the department may certify to all of their official acts and may certify copies of all official documents and orders filed in their respective offices. For the purpose of making such certifications, the board and the department may adopt seals.

*(Amended by Stats. 1957, Ch. 947.)*

**§ 1055.** (a) The executive director of the board may issue a complaint to any person or entity on which administrative civil liability may be imposed pursuant to Section 1052, Article 4 (commencing with Section 1845) of Chapter 12 of Part 2 of Division 2, or Section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail. The complaint shall inform the party served that the party may request a hearing not later than 20 days from the date the party was served and that the board may adopt an order setting administrative civil liability based on the allegations set forth in the complaint without a hearing if the party does not sign a written request for a hearing that is delivered to, or received by mail by, the board within 20 days after the date the party was served. The hearing shall be before the board or a member of the board, in accordance with Section 183.

(c) The board, after any necessary hearing, may adopt an order setting administrative civil liability, or determining that a liability shall not be imposed.

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(d) Orders setting administrative civil liability shall become effective and final upon issuance thereof and payment shall be made.

*(Amended by Stats. 2015, Ch. 683, Sec. 43. Effective January 1, 2016.)*

**§ 1055.2.** A person or entity shall not be subject to both civil liability imposed under Section 1055 and civil liability imposed by the superior court under Section 1052 or Article 4 (commencing with Section 1845) of Chapter 12 of Part 2 of Division 2 for the same act or failure to act.

*(Amended by Stats. 2010, Ch. 288, Sec. 6. Effective January 1, 2011.)*

**§ 1055.3.** In determining the amount of civil liability, the board shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

*(Added by Stats. 1987, Ch. 756, Sec. 5.)*

**§ 1055.4.** After the time for review under Chapter 4 (commencing with Section 1120) has expired, the board may apply to the clerk of the appropriate court for a judgment to collect the administrative civil liability imposed in accordance with Section 1055. The application, which shall include a certified copy of the board action, constitutes a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

*(Added by Stats. 1997, Ch. 323, Sec. 1. Effective January 1, 1998.)*

**§ 1056.** The board and the department may fix reasonable charges for publications issued under their respective authorities.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1057.** All fees charged and collected under this chapter shall be paid, at least once each month, accompanied by a detailed statement thereof, into the State Treasury.

*(Amended by Stats. 1963, Ch. 330.)*

**§ 1058.** The board may make such reasonable rules and regulations as it may from time to time deem advisable in carrying out its powers and duties under this code.

*(Amended by Stats. 1969, Ch. 482.)*

**§ 1058.5.** (a) This section applies to any emergency regulation adopted by the board for which the board makes both of the following findings:

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(1) The emergency regulation is adopted to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.

(2) The emergency regulation is adopted in response to conditions which exist, or are threatened, in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions.

(b) Notwithstanding Sections 11346.1 and 11349.6 of the Government Code, any findings of emergency adopted by the board, in connection with the adoption of an emergency regulation under this section, are not subject to review by the Office of Administrative Law.

(c) An emergency regulation adopted by the board under this section may remain in effect for up to 270 days, as determined by the board, and is deemed repealed immediately upon a finding by the board that due to changed conditions it is no longer necessary for the regulation to remain in effect. An emergency regulation adopted by the board under this section may be renewed if the board determines that the conditions specified in paragraph (2) of subdivision (a) are still in effect.

(d) In addition to any other applicable civil or criminal penalties, any person or entity who violates a regulation adopted by the board pursuant to this section is guilty of an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs.

(e) (1) Notwithstanding subdivision (b) of Section 1551, subdivision (d) of Section 1845, and subdivision (f) of Section 1846, a civil liability imposed under Chapter 12 (commencing with Section 1825) of Part 2 of Division 2 by the board or a court for a violation of an emergency conservation regulation adopted pursuant to this section shall be deposited, and separately accounted for, in the Water Rights Fund. Funds deposited in accordance with this subdivision shall be available, upon appropriation, for water conservation activities and programs.

(2) For purposes of this subdivision, an "emergency conservation regulation" means an emergency regulation that requires an end user of water, a water retailer, or a water wholesaler to conserve water or report to the board on water conservation. Water conservation includes restrictions or limitations on particular uses of water or a reduction in the amount of water used or served, but does not include curtailment of diversions when water is not

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available under the diverter's priority of right or reporting requirements related to curtailments.

*(Amended by Stats. 2015, Ch. 27, Sec. 13. Effective June 24, 2015.)*

**§ 1059.** The board and the department, as to matters under each of their respective jurisdictions, may designate one or more of their employees who shall have authority to certify under their respective seals all copies of orders, applications, permits, licenses, certificates, and other records under this division, and to attest all records, transcripts, evidence, and other original documents which it is necessary so to authenticate.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1060.** (a) All fees collected by the State Water Resources Control Board or by a California regional water quality control board, and deposited in the State Treasury, except funds collected under Part 3 (commencing with Section 2000) of this division, funds received for trial distribution expenses in connection with the administration of Section 1051.5, and deposits and payments made pursuant to Section 5007, shall be credited to the appropriation for the support of the board which is current at the time of the deposit of such fees in the State Treasury.

(b) Money deposited with or paid to the board pursuant to Section 1051.5 or 5007 and deposited by the board in the State Treasury is available for expenditure by the board in accordance with those sections without regard to fiscal years and irrespective of the provisions of Section 16304 of the Government Code, and any unused balance shall be refunded by the board to the person entitled thereto.

*(Amended by Stats. 1971, Ch. 1288.)*

### **CHAPTER 3. WITNESSES AND PRODUCTION OF EVIDENCE [1075. - 1106.]**

*(Chapter 3 enacted by Stats. 1943, Ch. 368.)*

#### **Article 1. Definitions [1075. - 1076.]**

*(Article 1 enacted by Stats. 1943, Ch. 368.)*

**§ 1075.** As used in this chapter, "proceeding" means any inquiry, investigation, hearing, ascertainment, or other proceeding ordered or undertaken by the board pursuant to this code.

*(Amended by Stats. 1969, Ch. 482.)*

**§ 1076.** As used in this chapter, "evidence" means any paper, book, map, account, or document.

*(Enacted by Stats. 1943, Ch. 368.)*

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**Article 2. Attendance and Fees [1080. - 1086.]**

*(Article 2 enacted by Stats. 1943, Ch. 368.)*

**§ 1080.** The board may administer oaths and issue subpoenas for the attendance and giving of testimony by witnesses and for the production of evidence in any proceeding in any part of the State.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1081.** Each witness who appears by order of the board shall receive for his attendance the same fees and mileage allowed by law to witnesses in civil cases, which shall be paid by the party at whose request the witness is subpoenaed.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1082.** When any witness who has not been required to attend at the request of any party is subpoenaed by the board his fees and mileage shall be paid from the funds appropriated for the use of the board and available for the purpose.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1083.** Any witness subpoenaed, except one whose fees and mileage are payable from the funds of the board, may, at the time of service, demand the fees to which he is entitled for travel to and from the place at which he is required to appear and one day's attendance.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1084.** If the witness demands the fees to which he is entitled at the time of service and they are not at that time paid or tendered he shall not be required to attend as directed in the subpoena.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1085.** All fees and mileage to which any witness is entitled under the provisions of this chapter may be collected by action therefor instituted by the person to whom they are payable.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1086.** No witness shall be compelled to attend as a witness before the board under this division out of the county in which he resides, unless the distance is less than 150 miles from his place of residence to the place of hearing, except that the board, upon affidavit of any party showing that the testimony of such witness is material and necessary, may indorse on the subpoena an order requiring the attendance of such witness.

*(Amended by Stats. 1959, Ch. 667.)*

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**Article 3. Compelling Attendance [1090. - 1097.]**

*(Article 3 enacted by Stats. 1943, Ch. 368.)*

**§ 1090.** The superior court of the county in which any proceeding is held by the board may compel the attendance and giving of testimony by witnesses and the production of evidence as required by any subpoena issued by the board.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1091.** In case of the refusal of any witness to attend or testify or produce any evidence required by a subpoena issued by it, the board may report by petition to the superior court in and for the county in which the proceeding is pending.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1092.** The petition shall set forth the following:

(a) That due notice has been given of the time and place of attendance of the witness or for the production of evidence and that the witness has been summoned in the manner prescribed in this chapter.

(b) That the witness has failed and refused to attend or produce the evidence required by the subpoena before the board in the proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of the proceeding.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1093.** The petition shall ask an order of court compelling the witness to attend, testify, and produce the evidence before the board.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1094.** The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place fixed by the court in the order and not more than 10 days from the date of the order, and then and there show cause, if any he have, why he refused to obey the subpoena, or refused to answer questions propounded to him by the board, or neglected, failed, or refused to produce before the board the evidence called for in the subpoena.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1095.** A copy of the order and of the petition shall be served upon the witness.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1096.** If it appears to the court that the subpoena was regularly issued, the court shall thereupon enter an order that the witness appear before the board at the time and place fixed in the order and testify or produce the required evidence or both testify and produce.

*(Amended by Stats. 1957, Ch. 1932.)*

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**§ 1097.** Upon failure to obey the order the witness shall be dealt with as for contempt of court.

*(Enacted by Stats. 1943, Ch. 368.)*

#### **Article 4. Depositions [1100. - 1100.]**

*(Article 4 enacted by Stats. 1943, Ch. 368.)*

**§ 1100.** The board or any party to a proceeding before it may, in any investigation or hearing, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

*(Amended by Stats. 2004, Ch. 182, Sec. 60. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

#### **Article 5. Immunity [1105. - 1106.]**

*(Article 5 enacted by Stats. 1943, Ch. 368.)*

**§ 1105.** (a) Except as provided in subdivision (c), no person shall be excused from testifying or from producing any evidence in any investigation or inquiry by or hearing before the board upon the ground that the testimony or evidence required of him or her may tend to incriminate him or her or subject him or her to any penalty.

(b) The board may grant immunity to any person who is compelled to testify or to produce documentary evidence before the board and who invokes the privilege against self-incrimination.

(c) If the board does not grant immunity after a person invokes the privilege against self-incrimination, the board shall excuse the person from giving any testimony or producing any evidence to which the privilege against self-incrimination applies, and the board shall dismiss, continue, or limit the scope of the proceedings as necessary to ensure that the unavailability of the testimony or evidence does not deny due process of law to any party.

*(Amended by Stats. 1994, Ch. 45, Sec. 1. Effective January 1, 1995.)*

**§ 1106.** No person who is granted immunity under subdivision (b) of Section 1105 shall be criminally prosecuted or be subjected to any criminal penalty for or on account of any act, transaction, matter, or thing material to the matter under investigation by the board concerning which he or she has been compelled as a witness to testify or to produce documentary evidence pursuant to the granting of immunity; but no person so testifying or producing shall be exempt from prosecution and punishment for any perjury committed by him or her in that testimony.

*(Amended by Stats. 1994, Ch. 45, Sec. 2. Effective January 1, 1995.)*

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**CHAPTER 4. RECONSIDERATION, AMENDMENT, AND JUDICIAL REVIEW OF WATER  
RIGHT DECISIONS AND ORDERS [1120. - 1126.2.]**

*(Chapter 4 added by Stats. 1996, Ch. 659, Sec. 2.)*

**Article 1. General Provisions [1120. - 1121.]**

*(Article 1 added by Stats. 1996, Ch. 659, Sec. 2.)*

**§ 1120.** This chapter applies to any decision or order issued under this part or Section 275, Part 2 (commencing with Section 1200), Part 2 (commencing with Section 10500) of Division 6, Chapter 11 (commencing with Section 10735) of Part 2.74 of Division 6, Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, or the public trust doctrine.

*(Amended by Stats. 2014, Ch. 347, Sec. 6. Effective January 1, 2015.)*

**§ 1121.** The board shall serve a copy of a decision or order on the parties by personal delivery or registered mail.

*(Added by Stats. 1996, Ch. 659, Sec. 2. Effective January 1, 1997.)*

**Article 2. Reconsideration and Amendment of Decisions and Orders  
[1122. - 1124.]**

*(Article 2 added by Stats. 1996, Ch. 659, Sec. 2.)*

**§ 1122.** The board may order a reconsideration of all or part of a decision or order on the board's own motion or on the filing of a petition of any interested person or entity. The petition shall be filed not later than 30 days from the date the board adopts a decision or order. The authority of the board to order a reconsideration on its own motion shall expire 30 days after it has adopted a decision or order. The board shall order or deny reconsideration on a petition therefor not later than 90 days from the date the board adopts the decision or order.

*(Amended by Stats. 2001, Ch. 315, Sec. 3. Effective January 1, 2002.)*

**§ 1123.** The decision or order may be reconsidered by the board on all the pertinent parts of the record and such argument as may be permitted, or a further hearing may be held, upon notice to all interested persons, for the purpose of receiving such additional evidence as the board may, for cause, allow. The decision or order on reconsideration shall have the same force and effect as an original order or decision.

*(Added by Stats. 1996, Ch. 659, Sec. 2. Effective January 1, 1997.)*

**§ 1124.** The board at any time may amend or modify a decision or order to correct any obvious typographical or clerical error or oversight without the necessity of notice and a hearing thereon.

*(Added by Stats. 1996, Ch. 659, Sec. 2. Effective January 1, 1997.)*

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**Article 3. Review by Court of Decisions and Orders [1126. - 1126.]**

*(Article 3 added by Stats. 1996, Ch. 659, Sec. 2.)*

**§ 1126.** (a) It is the intent of the Legislature that all issues relating to state water law decided by the board be reviewed in state courts, if a party seeks judicial review. It is further the intent of the Legislature that the courts assert jurisdiction and exercise discretion to fashion appropriate remedies pursuant to Section 389 of the Code of Civil Procedure to facilitate the resolution of state water rights issues in state courts.

(b) Any party aggrieved by any decision or order may, not later than 30 days from the date of final action by the board, file a petition for a writ of mandate for review of the decision or order. Except in cases where the decision or order is issued under authority delegated to an officer or employee of the board, reconsideration before the board is not an administrative remedy that is required to be exhausted before filing a petition for writ of mandate. The time for filing the petition for writ of mandate and the time for filing an action or proceeding in which the board is a respondent under Section 21167 of the Public Resources Code shall be extended for any person who seeks reconsideration by the board pursuant to this article. The amendment of this subdivision made during the 2001 portion of the 2001–02 Regular Session does not constitute a change in, but is declaratory of, existing law.

(c) Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings under this section. For the purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall exercise its independent judgment on the evidence in any case involving the judicial review of a cease and desist order issued pursuant to Article 2 (commencing with Section 1831) of Chapter 12 of Part 2 of Division 2, and in any other case in which the court is authorized by law to exercise its independent judgment on the evidence.

(d) If no aggrieved party petitions for a writ of mandate within the time provided by this section, the decision or order of the board is not subject to review by any court.

(e) In any court case reviewing a decision or order by the board relating to a permit or license to appropriate water held by the state through the department or any other state agency, or to a permit or license to appropriate water held by the United States through the Bureau of Reclamation or any other federal agency, the election by the United States, or any agency thereof, not to be a party shall not, in and of itself, be the basis for dismissal pursuant to Section 389 of the Code of Civil Procedure or any other provision of law.

*(Amended by Stats. 2011, Ch. 296, Sec. 312. Effective January 1, 2012.)*

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**PART 2. APPROPRIATION OF WATER [1200. - 1851.]**

*(Part 2 enacted by Stats. 1943, Ch. 368.)*

**CHAPTER 1. GENERAL PROVISIONS [1200. - 1248.]**

*(Chapter 1 enacted by Stats. 1943, Ch. 368.)*

**Article 1. Water Subject to Appropriation [1200. - 1203.]**

*(Article 1 enacted by Stats. 1943, Ch. 368.)*

**§ 1200.** Whenever the terms stream, lake or other body of water, or water occurs in relation to applications to appropriate water or permits or licenses issued pursuant to such applications, such term refers only to surface water, and to subterranean streams flowing through known and definite channels.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1201.** All water flowing in any natural channel, excepting so far as it has been or is being applied to useful and beneficial purposes upon, or in so far as it is or may be reasonably needed for useful and beneficial purposes upon lands riparian thereto, or otherwise appropriated, is hereby declared to be public water of the State and subject to appropriation in accordance with the provisions of this code.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1202.** The following are hereby declared to constitute unappropriated water:

(a) All water which has never been appropriated.

(b) All water appropriated prior to December 19, 1914, which has not been in process, from the date of the initial act of appropriation, of being put, with due diligence in proportion to the magnitude of the work necessary properly to utilize it for the purpose of the appropriation, or which has not been put, or which has ceased to be put to some useful or beneficial purpose.

(c) All water appropriated pursuant to the Water Commission Act or this code which has ceased to be put to the useful or beneficial purpose for which it was appropriated, or which has been or may be or may have been appropriated and is not or has not been in the process of being put, from the date of the initial act of appropriation, to the useful or beneficial purpose for which it was appropriated, with due diligence in proportion to the magnitude of the work necessary properly to utilize it for the purpose of the appropriation.

(d) Water which having been appropriated or used flows back into a stream, lake or other body of water.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1203.** Any water the right to the use of which is held by any municipality which is in excess of the existing municipal needs therefor may be appropriated by any person entitled to the possession of land upon which such excess water may be put to beneficial use but the right of such person to use such water shall

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continue only for such period as the water is not needed by the municipality. This section supplements but does not otherwise affect Sections 1460 to 1464, inclusive.

*(Added by Stats. 1945, Ch. 1344.)*

### **Article 1.3. Declaration of Fully Appropriated Stream System [1205. - 1207.]**

*(Article 1.3 added by Stats. 1987, Ch. 788, Sec. 1.)*

**§ 1205.** (a) Following notice and hearing, the board may adopt a declaration that a stream system is fully appropriated. As used in this article, “stream system” includes stream, lake, or other body of water, and tributaries and contributory sources, but does not include an underground water supply other than a subterranean stream following through known and definite channels.

(b) A declaration that a stream system is fully appropriated shall contain a finding that the supply of water in the stream system is being fully applied to beneficial uses where the board finds that previous water rights decisions have determined that no water remains available for appropriation.

(c) Upon its own motion or upon petition of any interested person, and following notice and hearing, the board may revoke or revise a declaration that a stream system is fully appropriated.

*(Added by Stats. 1987, Ch. 788, Sec. 1.)*

**§ 1206.** (a) From and after the date of adoption of a declaration that a stream system is fully appropriated, and subject to subdivision (b), the board shall not accept for filing any application for a permit to appropriate water from the stream system described in that declaration, and the board may cancel any application pending on that date.

(b) Notwithstanding subdivision (a), the board may provide, in any declaration that a stream system is fully appropriated, for acceptance for filing of applications to appropriate water under specified conditions. Any provision to that effect shall specify the conditions and may contain application limitations, including, but not limited to, limitations on the purpose of use, on the instantaneous rate of diversion, on the season of diversion, and on the amount of water which may be diverted annually. The board may make those limitations applicable to individual applications to appropriate water, or to the aggregate of the applications, or to both.

(c) Subdivision (a) shall not apply to applications for temporary permits made pursuant to Chapter 6.5 (commencing with Section 1425) or to any provision of this code respecting change in point of diversion, place of use, or purpose of use.

*(Added by Stats. 1987, Ch. 788, Sec. 1.)*

**§ 1207.** Notice of hearing pursuant to this article shall be given as follows:

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(a) The notice shall be published at least once a week for four consecutive weeks in one or more newspapers of general circulation published in each county in which any part of the stream system is situated, and publication shall be complete at least 60 days prior to the date of hearing.

(b) At least 60 days prior to the date of the hearing, the notice shall be mailed to all persons known to the board who own land that appears to be riparian to the stream system, who divert water from the stream system, or who have made written request to the board for special notice of hearing pursuant to this article.

*(Added by Stats. 1987, Ch. 788, Sec. 1.)*

### **Article 1.5. Treated Waste Water [1210. - 1212.]**

*(Article 1.5 added by Stats. 1980, Ch. 933, Sec. 4.)*

**§ 1210.** The owner of a waste water treatment plant operated for the purpose of treating wastes from a sanitary sewer system shall hold the exclusive right to the treated waste water as against anyone who has supplied the water discharged into the waste water collection and treatment system, including a person using water under a water service contract, unless otherwise provided by agreement.

Nothing in this article shall affect the treatment plant owner's obligations to any legal user of the discharged treated waste water.

Nothing in this article is intended to interfere with the regulatory authority of the board or any California regional water quality control board under Division 7 (commencing with Section 13000).

*(Added by Stats. 1980, Ch. 933, Sec. 4.)*

**§ 1211.** (a) Prior to making any change in the point of discharge, place of use, or purpose of use of treated wastewater, the owner of any wastewater treatment plant shall obtain approval of the board for that change. The board shall review the changes pursuant to the provisions of Chapter 10 (commencing with Section 1700) of Part 2 of Division 2.

(b) Subdivision (a) does not apply to changes in the discharge or use of treated wastewater that do not result in decreasing the flow in any portion of a watercourse.

*(Amended by Stats. 2001, Ch. 315, Sec. 5. Effective January 1, 2002.)*

**§ 1212.** The board shall not grant any permit or license to any person other than the treated waste water producer for the appropriation of treated waste water where the producer has introduced such water into the watercourse with the prior stated intention of maintaining or enhancing fishery, wildlife, recreational, or other instream beneficial uses. Holders of existing water rights may not use or claim such water.

*(Added by Stats. 1980, Ch. 933, Sec. 4.)*

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**Article 1.7. Areas of Origin [1215. - 1222.]**

*(Article 1.7 added by Stats. 1984, Ch. 1655, Sec. 2.)*

**§ 1215.** This article shall only apply to a water supplier exporting or intending to export water for use outside a protected area pursuant to applications to appropriate surface water filed, or groundwater appropriations initiated, after January 1, 1985, that are not subject to Section 11460.

*(Added by Stats. 1984, Ch. 1655, Sec. 2.)*

**§ 1215.5.** (a) For the purposes of this article, “protected area”, means all of lands which normally drain to the ocean, to a hydraulic sink, or to another state within any of the following, and only the following, river systems:

- (1) The Sacramento River System.
- (2) The Mokelumne River System.
- (3) The Calaveras River System.
- (4) The San Joaquin River System.
- (5) The Mono Lake System.
- (6) The combined Truckee, Walker, and Carson River Systems.
- (7) The combined river systems which drain to the ocean from and

including the Russian River System northward to the California-Oregon border.

(b) The confluences of the Sacramento, Mokelumne, Calaveras, and San Joaquin River Systems are within the delta, as defined in Section 12220, and the delta shall be considered to be within each of these protected areas.

*(Added by Stats. 1984, Ch. 1655, Sec. 2.)*

**§ 1215.6.** For the purposes of this article, “water user or users” within a protected area means an appropriator or appropriators, a riparian user or users, or a groundwater user or users of water on land owned or controlled by them within a protected area.

*(Added by Stats. 1984, Ch. 1655, Sec. 2.)*

**§ 1216.** A protected area shall not be deprived directly or indirectly of the prior right to all the water reasonably required to adequately supply the beneficial needs of the protected area, or any of the inhabitants or property owners therein, by a water supplier exporting or intending to export water for use outside a protected area pursuant to applications to appropriate surface water filed, or groundwater appropriations initiated, after January 1, 1985, that are not subject to Section 11460.

*(Added by Stats. 1984, Ch. 1655, Sec. 2.)*

**§ 1217.** (a) In addition to the right to obtain a water right which would have priority over the rights of an exporter, water users in a protected area shall have the right to purchase, for adequate compensation, water made available by the construction of any works by a water supplier exporting or intending to export water for use outside the protected area. Nothing in this section shall be

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construed to authorize export of water from a protected area to which users within the protected area are otherwise entitled, nor to require users within a protected area to pay for water to which they are otherwise entitled.

(b) At the request of a water user or users within a protected area, a water supplier exporting or intending to export water for use outside the protected area who is subject to Section 1216 shall meet and negotiate in good faith for the purpose of entering into contracts for the purchase of water as provided in subdivision (a).

(c) Any water user or users in a protected area may bring an action in the superior court to require compliance with the duty to meet and negotiate in good faith pursuant to this section. The court may issue a temporary restraining order, preliminary injunction, or permanent injunction, as appropriate, to secure compliance with this section.

(d) The meetings and negotiations required by this section may occur between the water supplier exporting water for use outside a protected area and any water user or users in a protected area, as determined appropriate by the parties. The meetings and negotiations shall not be subject to the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code or Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code.

(e) Nothing in this section shall be construed as a limitation on the authority of the board to establish water quality standards or to subject water right entitlements to terms and conditions for the protection of reasonable and beneficial uses consistent with the provisions of Section 2 of Article X of the California Constitution.

*(Added by Stats. 1984, Ch. 1655, Sec. 2.)*

**§ 1218.** Upon the request of an applicant for a permit to appropriate water for use outside a protected area, a county of origin shall cooperate with the applicant in estimating the amount of water that may be purchased within the county pursuant to subdivision (a) of Section 1217 and that may be developed or used within the county impacting the proposed project, including an estimated time schedule.

The purpose of this section is to assist the applicant in planning the export project and to assist the counties of origin in their water planning.

*(Added by Stats. 1984, Ch. 1655, Sec. 2.)*

**§ 1219.** A water supplier exporting or intending to export water outside a protected area, or a water user or users within a protected area, may declare that an impasse has been reached between the parties in negotiations over matters within the scope of negotiations specified in Section 1217 and may request the director to appoint a panel of five disinterested persons from whom the parties shall select, by a process of elimination, the mediator. After drawing

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lots to determine the order, the parties shall each, in turn, eliminate a name from the panel until there is only one person remaining on the panel, who shall be the mediator. The mediator shall meet forthwith with the parties or their representatives, either jointly or separately, and shall take such other steps as the mediator may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be provided by the parties. Nothing in this section shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure, and in the event of such agreement, the director shall not appoint a mediator.

*(Added by Stats. 1984, Ch. 1655, Sec. 2.)*

**§ 1219.5.** The provisions of this article shall not require any water supplier exporting or intending to export water for use outside a protected area to furnish to any water user or users in a protected area claiming rights under this article, without adequate compensation therefor, any water made available for domestic, municipal, industrial, or agricultural uses by the construction of any works by the water exporter.

*(Added by Stats. 1984, Ch. 1655, Sec. 2.)*

**§ 1220.** (a) No groundwater shall be pumped for export from within the combined Sacramento and Delta-Central Sierra Basins, as defined in the Department of Water Resources' Bulletin 160-74, unless the pumping is in compliance with a groundwater management plan that is adopted by ordinance pursuant to subdivision (b) by the county board of supervisors, in full consultation with affected water districts, and that is subsequently approved by a vote in the counties or portions of counties that overlie the groundwater basin, except that water that has seeped into the underground from any reservoir, afterbay, or other facility of an export project may be returned to the water supply of the export project. For the purposes of this section, the county board of supervisors may designate a county water agency to act on its behalf if the directors of the county water agency are publicly elected and the county water agency encompasses the entire county. The county board of supervisors may revoke that designation by resolution at any time.

(b) Notwithstanding any other provision of law, a county board of supervisors whose county contains part of the combined Sacramento and Delta-Central Sierra Basins may adopt groundwater management plans to implement the purposes of this section.

(c) A county board of supervisors shall not exercise the powers authorized by this section within the boundaries of another local agency supplying water to that area without the prior agreement of the governing body of that other local agency.

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(d) This section does not apply to groundwater pumping by the Eastern Water Alliance Joint Powers Agency for export from the Eastern San Joaquin County Basin, as described on pages 38 and 39 of the Department of Water Resources Bulletin No. 118-80, provided that the groundwater pumping is approved by San Joaquin County pursuant to its ordinances regulating the management and export of groundwater as these ordinances are in effect at the time of permit approval by San Joaquin County. Section 10753.1 applies to any groundwater regulation under this section. As used in this section, the term “groundwater” has the same definition as set forth in in subdivision (a) of Section 10752.

*(Amended by Stats. 2003, Ch. 740, Sec. 5. Effective January 1, 2004.)*

**§ 1221.** This article shall not be construed to authorize the board to regulate groundwater in any manner.

*(Added by Stats. 1984, Ch. 1655, Sec. 2.)*

**§ 1222.** Nothing in this article shall be deemed to diminish the rights and protections to watersheds of origin contained in existing law including, but not limited to, Part 4.5 (commencing with Section 12200) of Division 6.

*(Added by Stats. 1984, Ch. 1655, Sec. 2.)*

## **Article 2. Exclusive Method of Appropriation [1225. - 1225.]**

*(Article 2 enacted by Stats. 1943, Ch. 368.)*

**§ 1225.** Except as provided in Article 2.5 (commencing with Section 1226) of this chapter, no right to appropriate or use water subject to appropriation shall be initiated or acquired except upon compliance with the provisions of this division.

*(Amended by Stats. 1974, Ch. 140.)*

## **Article 2.5. Stockponds [1226. - 1226.4.]**

*(Article 2.5 added by Stats. 1974, Ch. 140.)*

**§ 1226.** The Legislature finds and declares that it is necessary and beneficial to the state to clear up many heretofore uncertain conditions of water rights which are the result of a large number of dams and other water impoundment structures which have been constructed for livestock watering use, including domestic and recreational use which is incidental to livestock use; that these structures have been constructed, many at the urging of local, state and federal government, as a matter of practical necessity by the owners or users of the land on which they exist; that these structures have been built without clearly defined water rights as a result of the uncertainty of the state law and the lack of information by the owners as to proper procedures by which to obtain a water right; and that it is in the interest of the state to clarify the right to the water impounded by these structures.

*(Added by Stats. 1974, Ch. 140.)*

**§ 1226.1.** The owner of any dam or other water impoundment structure constructed prior to January 1, 1969, the capacity of which is not in excess of 10 acre-feet on January 1, 1975, and concerning which water rights litigation between private parties was not a matter of record prior to January 1, 1974, is declared to have a valid water right for the use of the water for purposes as specified in Section 1226, if that person files a claim of water right with the board not later than December 31, 1997. All permits or licenses issued by the board prior to the effective date of this article shall have priority over any water right claimed pursuant to this article.

*(Amended by Stats. 1996, Ch. 667, Sec. 4. Effective September 20, 1996.)*

**§ 1226.2.** (a) Any person who has a valid water right pursuant to Section 1226.1, who files a claim of water right with the board on or before December 31, 1977, has a water right priority as of the date of the construction of the dam or other water impoundment structure.

(b) Any person who has a valid water right pursuant to Section 1226.1, who files a claim of water right with the board after December 31, 1977, and before January 1, 1998, has a water right priority as of the date of filing.

*(Amended by Stats. 1996, Ch. 667, Sec. 5. Effective September 20, 1996.)*

**§ 1226.3.** Each claim of water right shall be accompanied by a fee which shall be in an amount determined by the board to cover the reasonable administrative costs of processing the claim. If the claimant establishes a water right pursuant to this article, the board shall issue a certificate of the validity of the water right to the claimant as expeditiously as practicable.

*(Amended by Stats. 1996, Ch. 667, Sec. 6. Effective September 20, 1996.)*

**§ 1226.4.** The board may, after notice and hearing, revoke any certificate of a water right granted pursuant to this article upon a finding that the water has ceased to be used for the purposes specified in Section 1226.

*(Amended by Stats. 1996, Ch. 667, Sec. 7. Effective September 20, 1996.)*

## **Article 2.6. Nonreserved Water Rights for Federal Uses [1227. - 1227.4.]**

*(Article 2.6 added by Stats. 1983, Ch. 670, Sec. 1.)*

**§ 1227.** The Legislature finds and declares that it is in the public interest to provide a priority of right to appropriate water for various beneficial water uses which were initiated by the United States, or its agencies, on reserved lands prior to July 3, 1978, and which uses are for secondary purposes, other than those for which the federal reservation was created, provided that the priority of right does not impair any existing water right.

*(Added by Stats. 1983, Ch. 670, Sec. 1.)*

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**§ 1227.1.** (a) To obtain the priority of right set forth in Section 1227, any agency of the United States shall submit to the board, on or before July 1, 1984, a statement for each water use initiated under claim of right by the United States on reserved lands for which beneficial use of water was initiated on or before July 3, 1978, concerning which water rights litigation was not a matter of record prior to July 3, 1978, and which use is for secondary purposes other than those for which the federal reservation was created.

(b) Each statement shall include, but not be limited to, all of the following:

- (1) The name and address of the agency of the United States which maintains the federal water project.
- (2) The name and address of the person who is responsible for the day-to-day operations of the federal water project.
- (3) The name of the stream or other source from which the water is being appropriated and the name of the next major stream or other body of water to which the source is tributary.
- (4) The point of diversion and place of use.
- (5) The purpose of the use.
- (6) A general description of the area in which the water is used.
- (7) The year in which the diversion was commenced or as near as is known.
- (8) Any information tending to indicate the quantity of water used, as may be prescribed by the board.

(c) The board shall make available to any person upon request copies of statements filed pursuant to this section for federal water uses within a particular county. Any person may file a request for special notice, by county. *(Added by Stats. 1983, Ch. 670, Sec. 1.)*

**§ 1227.2.** (a) Subject to subdivisions (b) and (c), any use for which a statement is submitted to the board pursuant to Section 1227.1 has a priority for the appropriation of water as of the date of initial use of the water, except that all permits and licenses issued by the board on applications, including those filed by the department pursuant to Part 2 (commencing with Section 10500) of Division 6, filed prior to July 1, 1984, have priority over any water right claimed by the United States pursuant to this article. Any use for which a statement is required shall be subject to Article 3 (commencing with Section 11460) of Chapter 3 of Part 3 of Division 6, in a like manner as the Central Valley Project.

(b) The scope of any appropriative right recognized pursuant to this article, including terms and conditions judged necessary by the board to best develop, conserve, and utilize the appropriated water in the public interest, shall be determined when that scope is at issue in any of the following proceedings:

(1) A proceeding upon an application, permit, or license of another, pursuant to this part, where the United States is a protestant or interested party.

(2) A proceeding to determine all rights to water of a stream system pursuant to Chapter 3 (commencing with Section 2500) of Part 3.

(3) A general adjudication of water rights commenced in the courts of this state.

(4) A proceeding to determine whether the board should commence an action pursuant to Section 1052, whether the United States is a complainant or a respondent.

(5) A proceeding under Section 275 and rules of the board in implementation thereof, whether the United States is a complainant or a respondent.

(c) The board shall, following any determination pursuant to subdivision (b), issue evidence of the scope of the right so determined; provided, that in no event, either prior or subsequent to the determination, shall the right exceed the amount of water that may be reasonably used without waste and under reasonable methods of use and diversion.

*(Added by Stats. 1983, Ch. 670, Sec. 1.)*

**§ 1227.3.** This article does not apply to uses involving the appropriation of water by any person, including any agency of the United States, pursuant to the Federal Reclamation Law, as amended or supplemented, or any other federal statute which authorizes projects for the development of water for uses other than uses upon reserved federal lands.

*(Added by Stats. 1983, Ch. 670, Sec. 1.)*

**§ 1227.4.** The board may, after following procedures set forth in Sections 1675 to 1675.2, inclusive, revoke any water right determined pursuant to this article upon a finding that the water has ceased to be used for a purpose for which the original development was intended.

*(Added by Stats. 1983, Ch. 670, Sec. 1.)*

## **Article 2.7. Registration of Appropriations for Small Domestic, Small Irrigation, and Livestock Stockpond Uses [1228. - 1229.1.]**

*(Heading of Article 2.7 amended by Stats. 2011, Ch. 579, Sec. 1.)*

**§ 1228.** This article shall be known and may be cited as the Water Rights Permitting Reform Act of 1988.

*(Added by Stats. 1988, Ch. 1040, Sec. 1.)*

**§ 1228.1.** (a) The Legislature finds and declares that it is in the public interest to provide a timely, efficient, and economic procedure for the acquisition of rights to appropriate water for a small domestic use, including

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incidental stock watering and irrigation uses, a small irrigation use, and for a livestock stockpond subject to prior rights.

(b) As used in this article:

(1) "Small domestic use" means a domestic use, as that use is defined by board rule, or a use for aesthetic, fire protection, recreational, or fish and wildlife purposes that is associated with a dwelling or other facility for human occupation, that does not exceed direct diversion of 4,500 gallons per day or diversion to storage of 10 acre-feet per year.

(2) "Small irrigation use" means either of the following:

(A) An irrigation use, heat control use, or frost protection use, not to exceed diversion to storage of 20 acre-feet per year, including impoundment for incidental aesthetic, fire protection, recreational, or fish and wildlife purposes.

(B) An irrigation use not to exceed direct diversion of 42,000 gallons per day, up to a maximum of 20 acre-feet per year.

(3) "Livestock stockpond" means a water impoundment structure constructed for livestock watering use not to exceed direct diversion of 4,500 gallons per day, or diversion to storage of 10 acre-feet per year, as that use is defined by the board, and including impoundment for incidental aesthetic, fire protection, recreational, or fish and wildlife purposes.

*(Amended by Stats. 2015, Ch. 683, Sec. 45. Effective January 1, 2016.)*

**§ 1228.2.** (a) (1) Subject to subdivision (b), a person may obtain a right to appropriate water for a small domestic, small irrigation, or livestock stockpond use upon first registering the use with the board and thereafter applying the water to reasonable and beneficial use with due diligence.

(2) With regard to an appropriation for small domestic use, a registration shall not be filed for a facility served by or used pursuant to a permit or license for domestic or municipal use, and not more than one small domestic use registration shall be in effect at any time for any facility. A small domestic use registration and a livestock stockpond use registration may be in effect for the same facility if the total combined water use covered by the registrations does not exceed 10 acre-feet per year.

(3) With regard to an appropriation for small irrigation use, more than one registration may be in effect at any time for a registrant if the diversion or storage facilities subject to registration for a registrant do not exceed the ratio of one per 20 irrigated acres, and if the total water use on all acreage covered by the registrations, including any water use based on other rights, does not exceed 100 acre-feet per year.

(4) A small domestic use registration and a small irrigation use registration, or a livestock stockpond use registration and a small irrigation use registration, may be in effect for the same facility only if the total combined water use covered by the registrations does not exceed 20 acre-feet per year.

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(5) With regard to an appropriation for livestock stockpond use, more than one registration may be in effect at any time for a registrant if stockponds subject to registration for that registrant do not exceed the ratio of one per 50 acres.

(b) Initiation of rights to appropriate water pursuant to this article shall be subject to Article 1.3 (commencing with Section 1205), relating to fully appropriated stream systems. The board shall not accept a registration of water use which proposes as a source of water supply a stream system which has been unconditionally declared by the board to be fully appropriated pursuant to Section 1205, except that subdivision (b) of Section 1206, relating to conditional declarations of fully appropriated stream systems, shall apply to registration of water use pursuant to this article, and the board shall accept those registrations where consistent with the conditions specified in the declaration.

(c) The board shall annually prepare and post on its Internet Web site information summarizing the location, nature, and amount of water appropriated pursuant to this article. The information shall include a description of the availability of unappropriated water in those stream systems which may become fully appropriated within the next reporting period.

(d) If a registration is filed with a source of supply on a stream system that the most recent report submitted under subdivision (c) identifies as a stream system that may become fully appropriated within the next reporting period, the registration shall not take effect unless the board finds that unappropriated water is available for the appropriation proposed by the registration. If the board finds that unappropriated water is not available to supply the proposed appropriation, the board shall, following notice and hearing, determine whether that stream system should be declared fully appropriated pursuant to Article 1.3 (commencing with Section 1205).

*(Amended by Stats. 2015, Ch. 683, Sec. 46. Effective January 1, 2016.)*

**§ 1228.3.** (a) Registration of water use pursuant to this article shall be made upon a form prescribed by the board. The registration form shall set forth all of the following:

- (1) The name and post office address of the registrant.
- (2) The source of water supply.
- (3) The nature and amount of the proposed use.
- (4) The proposed place of diversion.
- (5) The place where it is intended to use the water.
- (6) The time for completion of construction of diversion works and for complete application of the water to the proposed use.

(7) A certification that the registrant has contacted a representative of the Department of Fish and Wildlife designated by that department for that purpose, has provided information to that department that is set forth in the

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registration form, and has agreed to comply with all lawful conditions, including, but not limited to, conditions upon the construction and operation of diversion works, required by the Department of Fish and Wildlife. The certification shall include a copy of any conditions required by the Department of Fish and Wildlife pursuant to this paragraph.

(8) Any other information that may reasonably be required by the board.

(b) Registration of water use shall be deemed completed on the date that the form, executed in substantial compliance with the requirements of this section, and the registration fee specified in Section 1525 are received by the board.

(c) The board shall issue monthly a list of registrations filed under this article during the preceding calendar month. This list shall contain the information required by paragraphs (1) to (6), inclusive, of subdivision (a). The list shall set forth a date prior to which an interested person may file a written protest in opposition to the approval of a stockpond registration. That date shall be not later than 30 days from the date on which the list is issued. The board shall mail the monthly list of registrations filed to a person who requests the list.

(d) Prior to the date set forth on the list required under subdivision (c), an interested person may file with the board a written protest in opposition to the approval of a stockpond registration. The protest shall clearly set forth the protestant's objections to the registered use based on interference with prior rights. The protest shall be served on the registrant by the protestant by mailing a duplicate copy of the protest to the registrant, or through service undertaken in another manner determined to be adequate by the board. The procedures set forth in Article 1.5 (commencing with Section 1345) of Chapter 5 shall be used for reviewing a protested registration.

*(Amended by Stats. 2015, Ch. 683, Sec. 47. Effective January 1, 2016.)*

**§ 1228.4.** (a) Any completed registration of water use gives to the registrant a priority of right as of the date of completed registration to take and use the amount of water ultimately applied with due diligence to reasonable and beneficial use thereunder, which amount shall not exceed the amount of proposed use as shown on the registration form.

(b) Any right obtained pursuant to this article shall remain in effect unless and until any of the following occur:

(1) The right is forfeited for nonuse pursuant to Section 1241, or abandoned.

(2) The right is revoked because the registrant knowingly made any false statement, or knowingly concealed any material fact, in the registration.

(3) The right is revoked for failure to renew the registration as provided in this article.

(4) The right is revoked pursuant to subdivision (c) of Section 1228.6.

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*(Added by Stats. 1988, Ch. 1040, Sec. 1.)*

**§ 1228.5.** (a) Registration of a small domestic, small irrigation, or livestock stockpond use pursuant to this article shall be renewed prior to the expiration of each five-year period following completed registration.

(b) Renewal of registration shall be made upon a form prescribed by the board and shall contain a report of water use made pursuant to the registration as may be required by the board.

(c) The conditions established by the board pursuant to Section 1228.6 that are in effect at the time of renewal of registration shall supersede the conditions that were applicable to the original completed registration.

(d) Failure to renew registration in substantial compliance with the reporting requirements prescribed by the board within the time period specified in subdivision (a), or to pay the renewal fee specified in Section 1525, shall result by operation of law in the revocation of any right acquired pursuant to this article.

*(Amended by Stats. 2011, Ch. 579, Sec. 4. Effective January 1, 2012.)*

**§ 1228.6.** (a) The board shall establish, and may from time to time revise, reasonable general conditions to which all appropriations made pursuant to this article shall be subject. The conditions shall include, but shall not be limited to, the following:

(1) The appropriation is subject to prior rights.

(2) All conditions lawfully required by the Department of Fish and Wildlife are conditions upon the appropriations.

(3) Diversion works shall be constructed and water applied to beneficial use with due diligence.

(4) Registration shall be renewed and water use reported pursuant to law and to the rules of the board.

(b) Immediately upon registration pursuant to Section 1228.3, renewal of registration pursuant to Section 1228.5, or amended registration pursuant to Section 1228.7, the board shall provide the registrant with a written document setting forth the conditions required by this section, and the perfection and exercise of rights acquired pursuant to this article shall at all times be subject to those conditions.

(c) The conditions required by this section shall be deemed “terms and conditions” within the meaning of Section 1825 and the expression of legislative intent contained in that section shall be applicable thereto. The authority of the board to enforce the terms and conditions of permits and licenses to appropriate water, and to prevent the unlawful diversion of water, including, but not limited to, provisions regarding cease and desist orders and the revocation of permits and licenses, shall be applicable to appropriations initiated or perfected pursuant to this article.

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*(Amended by Stats. 2015, Ch. 683, Sec. 48. Effective January 1, 2016.)*

**§ 1228.7.** (a) A registrant may change the point of diversion or place of use by delivering to the board an amended registration form in accordance with Section 1228.3, including payment of the registration fee specified in Section 1525, except that the purpose of the use shall not be changed and the change shall not operate to the injury of any legal user of the water involved.

(b) A completed amended registration of water use continues in effect the priority of right as of the date of the original completed registration.

(c) All provisions of this article regarding appropriations made pursuant thereto, including, but not limited to, provisions regarding enforcement, are applicable to the appropriation as described in the completed amended registration, except that the conditions established by the board pursuant to Section 1228.6 that are in effect at the time of completion of the amended registration shall supersede the conditions that were applicable to the original completed registration.

*(Amended by Stats. 2010, Ch. 288, Sec. 9. Effective January 1, 2011.)*

**§ 1229.** (a) The board is not required to adopt general conditions for small irrigation use pursuant to subdivision (a) of Section 1228.6 until the board determines that funds are available for that purpose.

(b) A registration for small irrigation use pursuant to this article is not authorized until the board establishes general conditions for small irrigation use pursuant to subdivision (a) of Section 1228.6 to protect instream beneficial uses.

(c) The board may establish general conditions for some methods of diversion or categories of small irrigation use before establishing general conditions for other methods or categories, in which case a registration for small irrigation use is authorized only for those methods or categories for which the board has established the general conditions for the protection of instream beneficial uses.

*(Amended by Stats. 2015, Ch. 683, Sec. 49. Effective January 1, 2016.)*

**§ 1229.1.** (a) This article does not apply to those stream segments for which the Director of Fish and Wildlife establishes proposed streamflow requirements pursuant to Section 10002 of the Public Resources Code, notwithstanding the July 1, 1989, deadline for preparation of the requirements.

(b) Notwithstanding subdivision (a), this article applies to a registration filed before the Director of Fish and Wildlife establishes proposed streamflow requirements for the source of water supply for the registration. The conditions for renewal under subdivision (c) of Section 1228.5 may include any conditions the Department of Fish and Wildlife determines to be necessary to protect stream-related fish and wildlife resources on a source of water supply for which

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the Director of Fish and Wildlife has established proposed streamflow requirements pursuant to Section 10002 of the Public Resources Code. *(Amended by Stats. 2015, Ch. 683, Sec. 50. Effective January 1, 2016.)*

### **Article 3. Appropriation from Interstate Streams [1230. - 1231.]**

*(Article 3 enacted by Stats. 1943, Ch. 368.)*

**§ 1230.** If the waters of an interstate body of water have been allocated between California and another state or Indian tribe by a compact, United States Supreme Court decree, or other appropriate method of allocating interstate waters, the board shall exercise its authority under this division in a manner consistent with the rights and responsibilities of the State of California under that interstate allocation and Section 1231 does not apply to the extent it is inconsistent with that interstate allocation.

*(Repealed and added by Stats. 2014, Ch. 274, Sec. 3. Effective January 1, 2015.)*

**§ 1231.** (a) A right of appropriation from a stream that flows across the state boundary that has the point of diversion and the place of use in another state and is recognized by the laws of that state shall have the same force and effect as if the point of diversion and the place of use were in this State if the laws of that state give like force and effect to similar rights acquired in this State.

(b) Subdivision (a) does not apply to interstate lakes, or streams flowing in or out of those lakes. Subdivision (a) applies where an appropriation or change in point of diversion, place of use, or purpose of use is proposed or made under either of the following:

(1) A right to the use of waters from the Truckee River if the appropriation or change is made pursuant to the operating agreement described in Section 205(a) of Public Law 101-618.

(2) A right to the use of waters from the Walker River and its tributaries if the appropriation or change is not inconsistent with the decree entered in *United States v. Walker River Irrigation District, et. al.* United States District Court for the District of Nevada Equity No. C-125, filed April 15, 1936, including any amendments to that decree entered before or after January 1, 2015.

*(Amended by Stats. 2014, Ch. 274, Sec. 4. Effective January 1, 2015.)*

### **Article 4. Beneficial Use [1240. - 1244.]**

*(Article 4 enacted by Stats. 1943, Ch. 368.)*

**§ 1240.** The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such a purpose the right ceases.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1241.** If the person entitled to the use of water fails to use beneficially all or any part of the water claimed by him or her, for which a right of use has vested,

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for the purpose for which it was appropriated or adjudicated, for a period of five years, that unused water may revert to the public and shall, if reverted, be regarded as unappropriated public water. That reversion shall occur upon a finding by the board following notice to the permittee, licensee, or person holding a livestock stockpond certificate or small domestic use, small irrigation use, or livestock stockpond use registration under this part and a public hearing if requested by the permittee, licensee, certificate holder, or registration holder. *(Amended by Stats. 2011, Ch. 579, Sec. 8. Effective January 1, 2012.)*

**§ 1241.6.** If water appropriated for irrigation purposes is not used by reason of compliance with crop control or soil conservation contracts with the United States, and in other cases of hardship as the board may by rule prescribe, the five-year forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code, and the forfeiture period applicable to water appropriated prior to December 19, 1914, shall be extended by an additional period of not more than 10 years or the duration of any crop control or soil conservation contracts with the United States if less than 10 years. *(Amended by Stats. 2010, Ch. 288, Sec. 12. Effective January 1, 2011.)*

**§ 1242.** The storing of water underground, including the diversion of streams and the flowing of water on lands necessary to the accomplishment of such storage, constitutes a beneficial use of water if the water so stored is thereafter applied to the beneficial purposes for which the appropriation for storage was made. *(Enacted by Stats. 1943, Ch. 368.)*

**§ 1242.5.** The board, subject to the provisions of Section 100 and whenever it is in the public interest, may approve appropriation by storage of water to be released for the purpose of protecting or enhancing the quality of other waters which are put to beneficial uses. *(Added by Stats. 1969, Ch. 482.)*

**§ 1243.** (a) The use of water for recreation and preservation and enhancement of fish and wildlife resources is a beneficial use of water. In determining the amount of water available for appropriation for other beneficial uses, the board shall take into account, when it is in the public interest, the amounts of water required for recreation and the preservation and enhancement of fish and wildlife resources.

(b) The board shall notify the Department of Fish and Wildlife of an application for a permit to appropriate water. The Department of Fish and Wildlife shall recommend the amounts of water, if any, required for the preservation and enhancement of fish and wildlife resources and shall report its findings to the board.

(c) This section does not affect riparian rights.

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*(Amended by Stats. 2015, Ch. 683, Sec. 51. Effective January 1, 2016.)*

**§ 1243.5.** In determining the amount of water available for appropriation, the board shall take into account, whenever it is in the public interest, the amounts of water needed to remain in the source for protection of beneficial uses, including any uses specified to be protected in any relevant water quality control plan established pursuant to Division 7 (commencing with Section 13000) of this code.

This section shall not be construed to affect riparian rights.

*(Added by Stats. 1969, Ch. 482.)*

**§ 1244.** The sale, lease, exchange, or transfer of water or water rights, in itself, shall not constitute evidence of waste or unreasonable use, unreasonable method of use, or unreasonable method of diversion and shall not affect any determination of forfeiture applicable to water appropriated pursuant to the Water Commission Act or this code or water appropriated prior to December 19, 1914.

This section does not constitute a change in, but is declaratory of, existing law.

*(Added by Stats. 1980, Ch. 933, Sec. 6.)*

### **Article 5. Liability Within a Watershed [1245. - 1248.]**

*(Article 5 added by Stats. 1955, Ch. 49.)*

**§ 1245.** Every municipal corporation of this State, and every person, firm or corporation engaged in supplying water to any municipal corporations for municipal, domestic or other uses, who enters any watershed, or any lands, streams or waters in the watershed for the purpose of acquiring or increasing a water supply for such purpose, or for the purpose of taking, diverting or transporting water for use by or in a municipal corporation, or for the purpose of supplying the needs of any municipal corporation, or its inhabitants, with water for the enumerated uses, shall be liable to all persons, firms and corporations, their heirs, representatives and successors, and to municipal corporations, districts and political subdivisions of this State whose property, business, trade, profession or occupation is within or conducted or carried on within the watershed entered, for all damage suffered or sustained by them either directly or indirectly because of injury, damage, destruction or decrease in value of any such property, business, trade, profession or occupation resulting from or caused by the taking of any such lands or waters, or by the taking, diverting or transporting of water from such watershed to and for use by or in any such municipal corporation.

*(Added by Stats. 1955, Ch. 49.)*

**§ 1246.** For the purpose of ascertaining the amount of any damage claimed to have been suffered or sustained by reason of any of the acts or things

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mentioned in Section 1245, every municipal corporation and every person, firm or corporation causing any such damage, is authorized to enter into an agreement for the arbitration or compromise of any claims, and all of the laws of this State relating to arbitration of controversies are made applicable to such claims.

*(Added by Stats. 1955, Ch. 49.)*

**§ 1247.** Nothing in this article shall confer the right to recover damages resulting directly or indirectly by reason of the construction, operation or maintenance of any conduit, pipe line, canal, ditch, aqueduct, reservoir, power transmission line or power house.

*(Added by Stats. 1955, Ch. 49.)*

**§ 1248.** This article shall be liberally construed.

*(Added by Stats. 1955, Ch. 49.)*

## **CHAPTER 2. APPLICATIONS TO APPROPRIATE WATER [1250. - 1276.]**

*(Chapter 2 enacted by Stats. 1943, Ch. 368.)*

### **Article 1. General Provisions [1250. - 1259.4.]**

*(Article 1 enacted by Stats. 1943, Ch. 368.)*

**§ 1250.** The board shall consider and act upon all applications for permits to appropriate water and shall do all things required or proper relating to such applications.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1250.5.** The board shall consider and act upon all applications for permits to appropriate water which propose, as a primary purpose of the application, the development of small hydroelectric energy facilities at an existing dam, canal, or conduit, up to and including 30 megawatts, or the development of any other hydroelectric facility with a generating capacity of five megawatts or less, within one year from the date a complete application and an instream beneficial use assessment have been filed with the board, except that the assessment need not be filed if the streamflow regime will not be changed, and except that final board action may be continued for a reasonable time not to exceed one year upon the request of the applicant or upon a finding by the board that the additional time is necessary to determine (1) if unappropriated water is available or (2) the effect upon instream uses.

*(Added by Stats. 1982, Ch. 1482, Sec. 2. Effective September 28, 1982.)*

**§ 1251.** The board shall make such investigations of the water resources of the State as may be necessary for the purpose of securing information needed in connection with applications for appropriations of water.

*(Amended by Stats. 1957, Ch. 1932.)*

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**§ 1252.** Any person may apply for and secure from the board, in conformity with this part and in conformity with reasonable rules and regulations adopted from time to time by it, a permit for any unappropriated water.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1252.1.** An appropriation of water of any stream or other source of water under this part does not confer authority upon the appropriator to prevent or interfere with soil conservation practices above the point of diversion in the watershed in which such stream or other source originates, which practices do not themselves constitute an appropriation for which a permit is required by this part.

*(Added by Stats. 1953, Ch. 1378.)*

**§ 1252.5.** All rights and privileges conferred by this part upon any person in relation to the appropriation of water are likewise conferred upon the United States, the State, and any entity or organization capable of holding an interest in real property in this State.

*(Added by Stats. 1943, Ch. 423.)*

**§ 1253.** The board shall allow the appropriation for beneficial purposes of unappropriated water under such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1254.** In acting upon applications to appropriate water the board shall be guided by the policy that domestic use is the highest use and irrigation is the next highest use of water.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1255.** The board shall reject an application when in its judgment the proposed appropriation would not best conserve the public interest.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1256.** In determining public interest under Sections 1253 and 1255, the board shall give consideration to any general or co-ordinated plan looking toward the control, protection, development, utilization, and conservation of the water resources of the State, including The California Water Plan, prepared and published by the Department of Water Resources or any predecessor thereof and any modification thereto as may be adopted by the department or as may be adopted by the Legislature by concurrent resolution or by law.

*(Amended by Stats. 1959, Ch. 2053.)*

**§ 1257.** In acting upon application to appropriate water, the board shall consider the relative benefit to be derived from (1) all beneficial uses of the water concerned including, but not limited to, use for domestic, irrigation,

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municipal, industrial, preservation and enhancement of fish and wildlife, recreational, mining and power purposes, and any uses specified to be protected in any relevant water quality control plan, and (2) the reuse or reclamation of the water sought to be appropriated, as proposed by the applicant. The board may subject such appropriations to such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest, the water sought to be appropriated.

*(Amended by Stats. 1970, Ch. 157.)*

**§ 1257.5.** The board, in acting on applications to appropriate water, shall consider streamflow requirements proposed for fish and wildlife purposes pursuant to Sections 10001 and 10002 of the Public Resources Code. The board may establish such streamflow requirements as it deems necessary to protect fish and wildlife as conditions in permits and licenses in accordance with this division.

*(Added by Stats. 1985, Ch. 1259, Sec. 4.)*

**§ 1258.** In acting upon applications to appropriate water, the board shall consider water quality control plans which have been established pursuant to Division 7 (commencing with Section 13000) of this code, and may subject such appropriations to such terms and conditions as it finds are necessary to carry out such plans.

*(Amended by Stats. 1969, Ch. 482.)*

**§ 1259.** In acting upon applications to appropriate water, the board shall consider the state goal of providing a decent home and suitable living environment for every Californian.

*(Added by Stats. 1979, Ch. 947.)*

**§ 1259.2.** (a) The board shall annually prepare a written summary, in chart form, of pending applications to appropriate water in the Counties of Marin, Napa, Sonoma, Mendocino, and Humboldt. The summary shall include a description of the status of each pending application, the actions taken in the preceding year, proposed actions for the upcoming year, and the proposed date for final action with regard to that application.

(b) For the purposes of carrying out subdivision (a), the board may post the information described in subdivision (a) on its Web site.

*(Added by Stats. 2004, Ch. 943, Sec. 2. Effective January 1, 2005.)*

**§ 1259.4.** (a) (1) On or before January 1, 2008, the board shall adopt principles and guidelines for maintaining instream flows in coastal streams from the Mattole River to San Francisco and in coastal streams entering northern San Pablo Bay, as part of state policy for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7, for the purposes of water right administration.

(2) The board may adopt principles and guidelines for maintaining instream flows not described in paragraph (1), as part of state policy for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7, for the purposes of water right administration.

(b) Prior to the adoption of principles and guidelines pursuant to subdivision (a), the board may consider the 2002 “Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams” for the purposes of water right administration.

*(Amended by Stats. 2005, Ch. 81, Sec. 7. Effective July 19, 2005.)*

## **Article 2. Contents of Applications [1260. - 1266.]**

*(Article 2 enacted by Stats. 1943, Ch. 368.)*

**§ 1260.** An application for a permit to appropriate water shall set forth all of the following:

- (a) The name and post office address of the applicant.
- (b) The source of water supply.
- (c) The nature and amount of the proposed use.
- (d) The location and description of the proposed headworks, ditch canal, and other works.
- (e) The proposed place of diversion.
- (f) The place where it is intended to use the water.
- (g) The time within which it is proposed to begin construction.
- (h) The time required for completion of the construction.
- (i) The time for the complete application of the water to the proposed use.
- (j) All data and information reasonably available to applicant or that can be obtained from the Department of Fish and Wildlife concerning the extent, if any, to which fish and wildlife would be affected by the appropriation, and a statement of any measures proposed to be taken for the protection of fish and wildlife in connection with the appropriation.

(k) Sufficient information to demonstrate a reasonable likelihood that unappropriated water is available for the proposed appropriation.

*(Amended by Stats. 2015, Ch. 683, Sec. 52. Effective January 1, 2016.)*

**§ 1261.** All applications shall be accompanied by as many copies of such maps, drawings, and other data as may be prescribed or required by the board, and such maps, drawings, and other data are part of the application.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1262.** If for agricultural purposes the application shall give the legal subdivisions of the land and the acreage to be irrigated, as near as may be.

*(Enacted by Stats. 1943, Ch. 368.)*

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**§ 1263.** If for power purposes the application shall state the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the use to which the power is to be applied.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1264.** If for municipal water supply the application shall state the present population to be served, and, as near as may be, the future requirements of the city.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1265.** If for mining purposes the application shall state the nature and location of the mines to be served and the methods of supplying and utilizing the water.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1266.** If for storage in a reservoir the application shall state the height of dam, the capacity of reservoir, and the use to be made of the impounded waters, except that for storage underground these additional requirements as to height of dam and capacity of reservoir shall be given as near as may be.

*(Enacted by Stats. 1943, Ch. 368.)*

### **Article 3. Defective Applications [1270. - 1271.]**

*(Article 3 enacted by Stats. 1943, Ch. 368.)*

**§ 1270.** A defective application made in a bona fide attempt to conform to the rules and regulations of the board and to the law secures to the applicant a priority of right as of the date of the application until he or she is notified in what respect his application is defective, and the applicant shall be allowed 60 days after notice of the defect, or any additional period of time that the board agrees to, in which to file an amended and perfected application.

*(Amended by Stats. 1997, Ch. 323, Sec. 3. Effective January 1, 1998.)*

**§ 1271.** If, within the period provided, the applicant does not file an amended and perfected application, the application shall be rejected and canceled, unless for good cause shown the board allows the applicant to file a further amended and perfected application.

*(Amended by Stats. 1997, Ch. 323, Sec. 4. Effective January 1, 1998.)*

### **Article 4. Supplemental Information [1275. - 1276.]**

*(Article 4 added by Stats. 1997, Ch. 323, Sec. 5.)*

**§ 1275.** After an application has been perfected, the board may request additional information reasonably necessary to clarify, amplify, correct, or otherwise supplement the information required to be submitted under Article 2 (commencing with Section 1260) or Article 3 (commencing with Section 1270).

The board shall provide a reasonable period for submitting the information. The additional information may include, but is not limited to, any of the following:

- (a) Information needed to demonstrate that unappropriated water is available for appropriation.
- (b) Information needed to comply, or demonstrate compliance with, any applicable requirements of the Fish and Game Code or the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.).
- (c) Information needed to comply with Division 13 (commencing with Section 21000) of the Public Resources Code.

*(Added by Stats. 1997, Ch. 323, Sec. 5. Effective January 1, 1998.)*

**§ 1276.** If, within the period provided, the applicant does not provide the information requested under Section 1275, the application shall be canceled, unless for good cause shown the board allows additional time in which to submit the requested information.

*(Added by Stats. 1997, Ch. 323, Sec. 5. Effective January 1, 1998.)*

### **CHAPTER 3. NOTICE OF APPLICATION [1300. - 1324.]**

*(Chapter 3 enacted by Stats. 1943, Ch. 368.)*

#### **Article 1. Contents of Notice [1300. - 1304.]**

*(Article 1 enacted by Stats. 1943, Ch. 368.)*

**§ 1300.** As soon as practicable after the receipt of an application for a permit to appropriate water which conforms to the rules and regulations of the board and to law, the board shall issue and deliver a notice of the application (a) to the applicant, (b) to the district attorney of each county wherein the applicant proposes to divert water under the application, and (c) to the board of supervisors of each county wherein the applicant proposes to divert water under the application.

*(Amended by Stats. 1965, Ch. 45.)*

**§ 1301.** The notice shall specify all of the following:

- (a) The number of the application.
- (b) The name and address of the applicant.
- (c) The date of filing.
- (d) The source of supply.
- (e) The amount applied for.
- (f) The season of diversion.
- (g) The location of the point of diversion.
- (h) The use to be made.
- (i) The location of the place of use.
- (j) The date of issuance of the notice.
- (k) Such other information as the board deems necessary.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1302.** If the application is for more than three cubic feet per second or for more than 200 acre-feet per annum of storage, the notice shall state that protests against the approval of the application may be filed within 60 days from the date of issuance of the notice or within such further time as the board may, for good cause shown, allow.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1303.** If the application is for three cubic feet or less per second, or for 200 acre-feet or less per annum of storage, the notice shall state that protests may be filed within 40 days from date thereof or within such further time as the board may, for good cause shown, allow.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1304.** The notice shall contain appropriate general information as to what protests against the approval of the application shall contain in order to accord with the requirements of law and the rules and regulations of the board.

*(Amended by Stats. 1957, Ch. 1932.)*

## **Article 2. Publication of Notice [1310. - 1317.]**

*(Article 2 enacted by Stats. 1943, Ch. 368.)*

**§ 1310.** If the application is for more than three cubic feet per second or for more than 200 acre-feet per annum of storage the notice of application shall be published in accordance with this article.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1311.** Upon receipt of notice of an application coming under this article, the applicant shall cause it to be published as directed by the board.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1312.** The notice shall be published at the expense of the applicant at least once a week for three consecutive weeks, commencing within 20 days of the date of issuance of the notice, in a newspaper having a general circulation and published within the county wherein the point of diversion lies, or, if there are points of diversion in more than one county, in each county in which a point of diversion lies.

*(Amended by Stats. 1970, Ch. 773.)*

**§ 1313.** In case there is no newspaper published within the appropriate county publication shall be made in a newspaper having a general circulation within the county.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1315.** Proof of publication shall be filed by the applicant within 60 days from the date of issuance of the notice.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1316.** Proof of publication shall be by copy of the notice as published attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the notice.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1317.** The board may cancel any application for failure of the applicant to file proof of publication in accordance with this article, provided the board first gives the applicant written notice of such possible cancellation and 15 days in which to file proof of publication.

*(Added by Stats. 1963, Ch. 501.)*

### **Article 3. Posting and Mailing Notice [1320. - 1324.]**

*(Article 3 enacted by Stats. 1943, Ch. 368.)*

**§ 1320.** Notice of an application for three cubic feet or less per second or for 200 acre-feet or less per annum of storage shall be given by posting and mailing in accordance with this article.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1321.** Upon the date of issuance of notice of an application coming under this article the board shall mail three copies of the notice to the applicant by registered mail and shall also send a copy by registered mail to each person who is known to the board and who in its judgment is interested in the application because of ownership or location in the vicinity of the proposed appropriation.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1322.** The applicant shall post the notice within 20 days of the date of issuance thereof in at least two conspicuous places in the locality to be affected by the proposed appropriation.

*(Amended by Stats. 1970, Ch. 773.)*

**§ 1323.** Proof of posting shall be by affidavit of the applicant or the person posting notice on behalf of the applicant and shall be filed within 40 days from the date of issuance of notice.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1324.** The board may cancel any application for failure of the applicant to file proof of posting in accordance with this article, provided the board first gives the applicant written notice of such possible cancellation and 15 days in which to file proof of posting.

*(Added by Stats. 1963, Ch. 501.)*

### **CHAPTER 4. PROTEST OF APPLICATION [1330. - 1335.]**

*(Chapter 4 enacted by Stats. 1943, Ch. 368.)*

**§ 1330.** Any person interested may, within the time allowed in the notice of application or within such further time as may, for good cause shown, be

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allowed by the board, file with it a written protest against the approval of an application.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1331.** The protest shall meet all of the following requirements:

- (a) State the name and address of the protestant.
- (b) Be signed by the protestant, or the protestant's agent or attorney.
- (c) Clearly and specifically set forth the protestant's objections to the approval of the application, and state the bases for these objections.
- (d) Contain other appropriate information and be in the form provided in the rules and regulations of the board.
- (e) Be served on the applicant by the protestant by mailing a duplicate copy of the protest to the applicant or through service undertaken in another manner determined to be adequate by the board.

*(Amended by Stats. 1997, Ch. 323, Sec. 6. Effective January 1, 1998.)*

**§ 1332.** The board may request from the protestant additional information reasonably necessary to clarify, amplify, correct, or otherwise supplement the information required to be submitted under Section 1331. The board shall provide a reasonable period for submitting the information, and may allow additional time for good cause shown.

*(Added by Stats. 1997, Ch. 323, Sec. 7. Effective January 1, 1998.)*

**§ 1333.** The protestant and the applicant shall make a good faith effort to resolve the protest within 180 days from the date on which the period provided under Section 1330 expires. For good cause, the board may allow additional time for the protestant and the applicant to attempt to resolve the protest.

*(Added by Stats. 1997, Ch. 323, Sec. 8. Effective January 1, 1998.)*

**§ 1334.** The board may request from the protestant or the applicant additional information that the board determines is reasonably necessary to attempt to resolve the protest. The board shall provide a reasonable period for submitting the information, and may allow additional time for good cause shown.

*(Added by Stats. 1997, Ch. 323, Sec. 9. Effective January 1, 1998.)*

**§ 1335.** (a) The board may cancel a protest or application for failure to provide information requested by the board under this article within the period provided.

(b) Except as provided in subdivisions (c) and (d), a protest shall not be canceled for failure to submit information not in the possession or under the control of the protestant if the protest is in compliance with Section 1331 and the applicant is or could be required to submit the information under Section 1260 or 1275.

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(c) If a protest is based on interference with a prior right, the board may cancel the protest if the protestant fails to submit any of the following information requested by the board:

(1) Information that the protestant is required to submit to the board to comply with Part 5.1 (commencing with Section 5100) during any period after the protest is filed.

(2) Information that is reasonably necessary to determine if the protestant has a valid water right.

(3) Information concerning the protestant's historical, current, or proposed future diversion and use of water that is reasonably necessary to determine if the proposed appropriation will result in injury to the protestant's exercise of its water right.

(d) If the protest is based on an allegation that the proposed appropriation would not be in the public interest, would adversely affect public trust uses, or would have adverse environmental impact, the board may cancel the protest for failure to submit information requested by the board if the board determines both of the following:

(1) The public review period has expired for any draft environmental document or negative declaration required to be circulated for public review and comment pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) In the absence of the requested information, there is no substantial evidence in light of the whole record to support the allegation.

*(Added by Stats. 1997, Ch. 323, Sec. 10. Effective January 1, 1998.)*

## **CHAPTER 5. PROCEEDINGS ON APPLICATION [1340. - 1353.]**

*(Chapter 5 enacted by Stats. 1943, Ch. 368.)*

### **Article 1. Notice of Hearing [1340. - 1342.]**

*(Article 1 enacted by Stats. 1943, Ch. 368.)*

**§ 1340.** Notice of hearing on a protested application shall be given by mailing notice not less than 20 days before the date of hearing to both the applicant and protestant by registered mail.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1341.** The notice of hearing on a protested application shall state the names of the applicant and protestant, the time and place fixed for the hearing, and such other appropriate information as may be deemed advisable by the board.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1342.** If a hearing is held on an unprotested application, notice of hearing shall be given by mailing notice not less than 20 days before the date of hearing.

*(Enacted by Stats. 1943, Ch. 368.)*

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**Article 1.5. Minor Protested Applications Procedure [1345. - 1348.]**

*(Article 1.5 added by Stats. 1980, Ch. 933, Sec. 7.)*

**§ 1345.** The Division of Water Rights shall conduct a field investigation of all minor protested applications. The board shall notify the parties of the field investigation not less than 20 days prior to conducting the field investigation, to enable the parties to attend and present information to the board.

*(Amended by Stats. 1997, Ch. 323, Sec. 11. Effective January 1, 1998.)*

**§ 1346.** The Division of Water Rights may request the parties to submit information in support of their positions. The Division of Water Rights may request information before, during, or after the field investigation. After the field investigation, the Division of Water Rights may conduct additional proceedings in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

*(Repealed and added by Stats. 1997, Ch. 323, Sec. 13. Effective January 1, 1998.)*

**§ 1347.** Based upon the field investigation and any other information obtained under this article, the Division of Water Rights shall issue a decision unless the board in its discretion determines that additional proceedings should be conducted under Section 183. A decision of the Division of Water Rights is subject to review as provided in Chapter 4 (commencing with Section 1120) of Part 1.

*(Repealed and added by Stats. 1997, Ch. 323, Sec. 15. Effective January 1, 1998.)*

**§ 1348.** For purposes of this article, a minor application shall mean any application which does not involve direct diversions in excess of three cubic-feet per second or storage in excess of 200 acre-feet per year.

*(Added by Stats. 1980, Ch. 933, Sec. 7.)*

**Article 2. Action on Application [1350. - 1353.]**

*(Article 2 enacted by Stats. 1943, Ch. 368.)*

**§ 1350.** The board may grant, or refuse to grant a permit and may reject any application, after hearing.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1351.** No hearing is necessary in order to issue a permit upon an unprotested application, or if undisputed facts support the issuance of the permit and there is no disputed issue of material fact, unless the board elects to hold a hearing. No hearing is necessary to reject an application after notice, if the application is defective, the applicant fails to provide information requested by the board, or undisputed facts support the denial of the application and there is no disputed issue of material fact, unless the board elects to hold a hearing.

*(Amended by Stats. 1997, Ch. 323, Sec. 16. Effective January 1, 1998.)*

§ 1352. Upon failure of any party in interest to appear at a hearing or show good cause within five days thereafter for his failure, final action may be taken without further hearing.

*(Enacted by Stats. 1943, Ch. 368.)*

§ 1353. In the conduct of hearings technical rules of evidence need not be applied.

*(Enacted by Stats. 1943, Ch. 368.)*

## **CHAPTER 6. PERMITS [1375. - 1410.2.]**

*(Chapter 6 enacted by Stats. 1943, Ch. 368.)*

### **Article 1. Prerequisites to Issuance of Permit [1375. - 1375.]**

*(Article 1 enacted by Stats. 1943, Ch. 368.)*

§ 1375. As prerequisite to the issuance of a permit to appropriate water the following facts must exist:

(a) There must be an applicant.

(b) The application must contain the matter and information prescribed by this division and be in the form required by the board.

(c) The intended use must be beneficial.

(d) There must be unappropriated water available to supply the applicant.

(e) All fees due must be paid.

*(Amended by Stats. 1957, Ch. 1932.)*

### **Article 2. Issuance of Permit [1380. - 1382.]**

*(Article 2 enacted by Stats. 1943, Ch. 368.)*

§ 1380. Upon the approval of an application the board shall issue a permit.

*(Amended by Stats. 1957, Ch. 1932.)*

§ 1381. The issuance of a permit gives the right to take and use water only to the extent and for the purpose allowed in the permit.

*(Enacted by Stats. 1943, Ch. 368.)*

§ 1382. All permits shall be under the terms and conditions of this division.

*(Enacted by Stats. 1943, Ch. 368.)*

### **Article 3. Permit Terms and Conditions [1390. - 1394.]**

*(Article 3 enacted by Stats. 1943, Ch. 368.)*

§ 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division, but no longer.

*(Enacted by Stats. 1943, Ch. 368.)*

§ 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement

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that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1392.** Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division, or for any rights granted or acquired under the provisions of this division, in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1393.** The board shall include as a condition in any permit under which a reservoir with an impounding capacity of 50 acre-feet or more is to be constructed, that the permittee shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

*(Added by Stats. 1959, Ch. 984.)*

**§ 1394.** (a) The board may reserve jurisdiction, in whole or in part, to amend, revise, supplement, or delete terms and conditions in a permit under either of the following circumstances:

(1) If the board finds that sufficient information is not available to finally determine the terms and conditions which will reasonably protect vested rights without resulting in waste of water or which will best develop, conserve, and utilize in the public interest the water sought to be appropriated, and that a period of actual operation or time for completion of studies will be necessary in order to secure the required information.

(2) If the application or applications being acted upon represent only part of a coordinated project, other applications for the project being pending, and the board finds that the coordinated project requires coordinated terms and conditions which cannot reasonably be decided upon until a decision is reached on the other pending applications.

(b) Jurisdiction shall be reserved under this section for no longer period of time than the board finds to be reasonably necessary, and in no case shall

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jurisdiction be exercised after the issuance of the license. The jurisdiction shall be exercised only after notice to the parties and a hearing.

*(Amended by Stats. 1996, Ch. 659, Sec. 5. Effective January 1, 1997.)*

#### **Article 4. Application to Beneficial Use and Construction of Works [1395. - 1398.]**

*(Article 4 enacted by Stats. 1943, Ch. 368.)*

**§ 1395.** Actual construction work upon any project shall begin within the time specified in the permit, which time shall not be less than 60 days from the date of the permit.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1396.** The construction of the work thereafter and the utilization of water for beneficial purposes shall be prosecuted with due diligence in accordance with this division, the terms of the permit, and the rules and regulations of the board.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1397.** The work shall be completed and the water applied to beneficial use in accordance with this division, the rules and regulations of the board, and the terms of the permit and within the period specified in the permit.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1398.** (a) The period specified in the permit for beginning construction work, for completion of construction work, for application of the water to beneficial use, or any or all of these periods may, for good cause shown, be extended by the board.

(b) After any hearing on a petition to extend the period or periods, the board may revoke the permit in accordance with Section 1410.

*(Amended by Stats. 1986, Ch. 670, Sec. 2.)*

#### **Article 5. Revocation of Permit [1410. - 1410.2.]**

*(Article 5 enacted by Stats. 1943, Ch. 368.)*

**§ 1410.** (a) There shall be cause for revocation of a permit if the work is not commenced, prosecuted with due diligence, and completed or the water applied to beneficial use as contemplated in the permit and in accordance with this division and the rules and regulations of the board.

(b) A permit may be revoked upon request of the permittee or under either of the following procedures:

(1) If, after a hearing on a petition for extension of time to complete a project and apply water to beneficial use, the board finds that cause exists to revoke the permit, the board may revoke the permit.

(2) If, after an investigation other than a hearing on a petition for extension of time, it appears that cause exists to revoke a permit, the board shall give notice of proposed revocation in writing, mailed in a sealed, prepaid

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postage and certified letter to the permittee at his or her last known address. If the permittee fails to request a hearing with the time provided under Section 1410.1, the board shall revoke the permit and declare the water subject to appropriation. After a hearing, when a hearing is requested by the permittee pursuant to Section 1410.1, the board may, upon a finding that cause exists, revoke the permit and declare the water subject to appropriation.  
(Amended by Stats. 2010, Ch. 288, Sec. 13. Effective January 1, 2011.)

**§ 1410.1.** The notice of proposed revocation of the permit pursuant to paragraph (2) of subdivision (b) of Section 1410 shall contain a statement of facts and information upon which the proposed revocation is based, and shall include a statement substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the permittee is delivered or mailed to the board within 15 days after receipt of this notice, the board may act upon the proposed revocation of the permit without a hearing. Any request for a hearing may be made by delivering or mailing the request to the board at the address given on the notice.

(Amended by Stats. 1986, Ch. 670, Sec. 5.)

**§ 1410.2.** In any case when a permit is revoked without a hearing, as provided in Section 1410.1, the permittee, within 90 days of the date of the order of revocation, may file with the board a request to set aside the revocation, and the board, for good cause shown, may reinstate the permit.  
(Added by Stats. 1971, Ch. 794.)

## **CHAPTER 6.5. TEMPORARY PERMITS [1425. - 1431.]**

*(Chapter 6.5 added by Stats. 1973, Ch. 536.)*

**§ 1425.** (a) Any person, whether or not an applicant, permittee, or licensee under provisions of this division other than this chapter, who has an urgent need to divert and use water may apply for, and the board may issue, a conditional, temporary permit without complying with other procedures or provisions of this division, but subject to all requirements of this chapter.

(b) Prior to issuing a permit pursuant to this chapter, the board shall make all of the following findings:

(1) The applicant has an urgent need for the water proposed to be diverted and used.

(2) The water may be diverted and used without injury to any lawful user of water.

(3) The water may be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

(4) The proposed diversion and use are in the public interest, including findings to support permit conditions imposed to ensure that the water is diverted and used in the public interest, without injury to any lawful user of

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water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

(c) “Urgent need,” for the purposes of this chapter, means the existence of circumstances from which the board may in its judgment conclude that the proposed temporary diversion and use is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented; except that the board shall not find an applicant’s need to be urgent if the board in its judgment concludes, if applicable, that the applicant has not exercised due diligence either (1) in making application for a permit pursuant to provisions of this division other than this chapter, or (2) in pursuing that application to permit.

(d) The board may delegate to any officer or employee of the board all or any of its functions under this chapter.

*(Amended by Stats. 1996, Ch. 667, Sec. 8. Effective September 20, 1996.)*

**§ 1426.** The application for a temporary permit shall be completed in accordance with the provisions of Section 1260 and shall be accompanied by such maps, drawings, and other data as may be required by the board, and the applicant shall pay an application fee, and a permit fee if a temporary permit is issued, both computed in accordance with the provisions of Chapter 8 (commencing with Section 1525) of this part.

*(Added by Stats. 1973, Ch. 536.)*

**§ 1427.** Before making the findings required by Section 1425, the board shall do all of the following:

(a) Review available records, files, and decisions that relate to the availability of water from the source at the proposed point of diversion to serve the proposed temporary diversion and use, and that relate to the rights of downstream users.

(b) Consult with representatives of the Department of Fish and Wildlife.

(c) Make a field investigation, if necessary or desirable in the opinion of the board.

*(Amended by Stats. 2015, Ch. 683, Sec. 53. Effective January 1, 2016.)*

**§ 1428.** The board may issue a temporary permit in advance of the notice required by this section. In all cases, whether or not a temporary permit has been issued, the board shall, as soon as practicable after the receipt of an application, issue and deliver to the applicant or permittee a notice of the application or permit, which includes the information required by Section 1301. Publication or posting of the notice shall be as follows:

(a) If the application or permit is for more than three cubic feet per second or for more than 200 acre-feet of storage, and if the permit is to remain in effect for more than 30 days, the notice shall be published by and at the expense of

the applicant or permittee at the earliest practicable time, not to exceed 20 days from the date of issuance of the notice, in a newspaper having a general circulation and published within the county wherein the point of diversion lies. Proof of publication shall be by copy of the notice as published and made part of an affidavit filed with the board within 10 days of publication.

(b) In all other cases, unless the permit is to be in effect less than 10 days:

(1) The applicant or permittee shall post the notice in at least two conspicuous places in the locality to be affected by the diversion and use. Notices shall be posted not later than two days after receipt of the notice by the applicant or permittee. An affidavit containing proof of posting shall be filed with the board within seven days of the date of notice.

(2) The board shall send a copy of the notice by registered mail to each person who, in the judgment of the board, could be adversely affected by the temporary diversion and use.

(c) Regardless of the rate of diversion or the amount of storage, if the permit is to be in effect less than 10 days, the board shall exercise its discretion with respect to requiring notice, both before and after issuance of the temporary permit, and may require such proof of notice as it deems appropriate.

(d) Any interested person may file objection to the temporary diversion and use with the board and shall send a copy to the applicant or permittee.

(e) The board shall give prompt consideration to any objection, and may hold a hearing thereon, after notice to all interested persons.

(f) Failure of the permittee to comply with any requirement of this section shall result in the automatic termination of the temporary permit.

*(Amended by Stats. 1978, Ch. 563.)*

**§ 1429.** The board shall supervise diversion and use of water under the temporary permit for the protection of all lawful users of waters and instream beneficial uses and for compliance with permit conditions.

*(Amended by Stats. 1986, Ch. 455, Sec. 3.)*

**§ 1430.** A temporary permit issued under this chapter shall not result in the creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the board. The authorization to divert and use water under a temporary permit shall automatically expire 180 days after the authorization takes effect, unless an earlier date is specified or the temporary permit is revoked. The 180-day period does not include any time required for monitoring, reporting, or mitigation before or after the authorization to divert or use water under the temporary permit.

*(Amended by Stats. 2015, Ch. 683, Sec. 54. Effective January 1, 2016.)*

**§ 1431.** A temporary permit issued under this chapter may be renewed by the board. Requests for renewals shall be processed in the manner provided by this chapter except that the permittee shall not be required to file duplicate maps, drawings or other data if they were furnished with the original application. Each such renewal shall be valid for a period not to exceed 180 days from the date of renewal.

*(Added by Stats. 1977, Ch. 844.)*

### **CHAPTER 6.6. TEMPORARY URGENCY CHANGES [1435. - 1442.]**

*(Chapter 6.6 added by Stats. 1982, Ch. 867, Sec. 6.)*

**§ 1435.** (a) Any permittee or licensee who has an urgent need to change a point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for, and the board may issue, a conditional, temporary change order without complying with other procedures or provisions of this division, but subject to all requirements of this chapter.

(b) Prior to issuing a change order pursuant to this chapter, the board shall make all of the following findings:

(1) The permittee or licensee has an urgent need to make the proposed change.

(2) The proposed change may be made without injury to any other lawful user of water.

(3) The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

(4) The proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

(c) "Urgent need," for the purposes of this chapter, means the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented; except that the board shall not find a petitioner's need to be urgent if the board in its judgment concludes, if applicable, that the petitioner has not exercised due diligence either (1) in petitioning for a change pursuant to provisions of this division other than this chapter, or (2) in pursuing that petition for change.

(d) The board may delegate to any officer or employee of the board all or any of its functions under this chapter.

*(Amended by Stats. 1996, Ch. 667, Sec. 9. Effective September 20, 1996.)*

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**§ 1436.** The petition for a temporary change order shall be completed in accordance with the rules of the board, and the petitioner shall pay the fee required by Chapter 8 (commencing with Section 1525).

*(Added by Stats. 1982, Ch. 867, Sec. 6.)*

**§ 1437.** Before making the findings required by Section 1435, the board shall review available records, files, and decisions that relate to the rights of other legal users of water, consult with representatives of the Department of Fish and Wildlife, and make a field investigation if the investigation is necessary or desirable in the opinion of the board.

*(Amended by Stats. 2015, Ch. 683, Sec. 55. Effective January 1, 2016.)*

**§ 1438.** (a) The board may issue a temporary change order in advance of the notice required by this section. In all cases, whether or not a temporary change order has been issued, the board shall, as soon as practicable after the receipt of a petition, issue and deliver to the permittee or licensee a notice of the change order which includes the information required by the rules of the board.

(b) Publication or posting of the notice shall be as follows:

(1) If the permit or license is for more than three cubic feet per second or for more than 200 acre-feet of storage, and if the change order is to remain in effect for more than 30 days, the notice shall be published by, and at the expense of, the permittee or licensee at the earliest practicable time, not to exceed 20 days from the date of issuance of the notice, in a newspaper having a general circulation and published within the county wherein the point of diversion lies. Proof of publication shall be by copy of the notice as published and made part of an affidavit filed with the board within 10 days of publication.

(2) In all other cases, unless the change order is to be in effect less than 10 days:

(A) The permittee or licensee shall post the notice in at least two conspicuous places in the locality to be affected by the change. Notices shall be posted not later than two days after receipt. An affidavit containing proof of posting shall be filed with the board within seven days of the date of notice.

(B) The board shall send a copy of the notice by registered mail to each person who, in the judgment of the board, could be adversely affected by the temporary change.

(c) Regardless of the rate of diversion or the amount of storage, if the change order is to be in effect less than 10 days, the board shall exercise its discretion with respect to requiring notice, both before and after issuance of the change order, and may require such proof of notice as it deems appropriate.

(d) Any interested person may file an objection to the temporary change with the board, and the board shall send a copy of that objection to the permittee or licensee.

(e) The board shall give prompt consideration to any objection, and may hold a hearing thereon, after notice to all interested persons.

(f) Failure of the permittee or licensee to comply with any requirement of this section shall result in the automatic termination of the temporary change. *(Added by Stats. 1982, Ch. 867, Sec. 6.)*

**§ 1439.** The board shall supervise diversion and use of water under the temporary change order for the protection of all other lawful users of water and instream beneficial uses and for compliance with change order conditions. *(Amended by Stats. 1986, Ch. 455, Sec. 6.)*

**§ 1440.** A temporary change order issued under this chapter shall not result in the creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the board. The authorization to divert and use water under a temporary change order shall automatically expire 180 days after the authorization takes effect, unless an earlier date is specified or the temporary change order is revoked. The 180-day period does not include any time required for monitoring, reporting, or mitigation before or after the authorization to divert or use water under the temporary change order. *(Amended by Stats. 2015, Ch. 683, Sec. 56. Effective January 1, 2016.)*

**§ 1441.** A temporary change order issued under this chapter may be renewed by the board. Requests for renewal shall be processed in the manner provided by this chapter except that the permittee or licensee shall not be required to file duplicate maps, drawings, or other data if they were furnished with the original petition. Each such renewal shall be valid for a period not to exceed 180 days from the date of renewal. *(Added by Stats. 1982, Ch. 867, Sec. 6.)*

**§ 1442.** This chapter shall not apply to any permittee or licensee petitioning for a temporary change pursuant to Chapter 10.5 (commencing with Section 1725). *(Added by Stats. 1982, Ch. 867, Sec. 6.)*

## **CHAPTER 7. PRIORITIES [1450. - 1491.]**

*(Chapter 7 enacted by Stats. 1943, Ch. 368.)*

### **Article 1. Priority of Application [1450. - 1450.]**

*(Article 1 enacted by Stats. 1943, Ch. 368.)*

**§ 1450.** Any application properly made gives to the applicant a priority of right as of the date of the application until such application is approved or rejected. Such priority continues only so long as the provisions of law and the rules and regulations of the board are followed by the applicant. *(Amended by Stats. 1957, Ch. 1932.)*

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**Article 2. Effect of Issuance of Permit [1455. - 1455.]**

*(Article 2 enacted by Stats. 1943, Ch. 368.)*

§ 1455. The issuance of a permit continues in effect the priority of right as of the date of the application and gives the right to take and use the amount of water specified in the permit until the issuance of a license for the use of the water or until the permit is revoked.

*(Amended by Stats. 1969, Ch. 1087.)*

**Article 3. Preferred Priorities of Municipalities [1460. - 1464.]**

*(Article 3 enacted by Stats. 1943, Ch. 368.)*

§ 1460. The application for a permit by a municipality for the use of water for the municipality or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether it is first in time.

*(Enacted by Stats. 1943, Ch. 368.)*

§ 1461. The application for, or the granting of, a permit to any municipality to appropriate water does not authorize the appropriation of any water for other than municipal purposes.

*(Enacted by Stats. 1943, Ch. 368.)*

§ 1462. Where permission to appropriate is granted to any municipality for any quantity of water in excess of the existing municipal needs therefor, the board may, pending the application to beneficial use of the entire appropriation permitted, issue permits for the temporary appropriation of the excess of the permitted appropriation over and above the quantity being applied to beneficial use from time to time by the municipality.

*(Amended by Stats. 1957, Ch. 1932.)*

§ 1463. When the municipality desires to use the additional water granted in its application it may do so upon making just compensation for the facilities for taking, conveying, and storing the additional water rendered valueless for said purposes to the person who constructed the facilities. The compensation, if not agreed upon, may be determined in the manner provided by law for determining the value of property taken by eminent domain proceedings.

*(Enacted by Stats. 1943, Ch. 368.)*

§ 1464. In lieu of the granting of such temporary permits for appropriation, the board may authorize the municipality to become as to such surplus a public utility, subject to the jurisdiction and control of the Public Utilities Commission of the State for such period from and after the date of the issuance of such permission to appropriate, as may be allowed for the application to municipal uses of the entire appropriation permitted.

*(Amended by Stats. 1957, Ch. 1932.)*

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**Article 4. Priority of Reservoir Systems Constituting Single Unit [1475. - 1475.]**

*(Article 4 enacted by Stats. 1943, Ch. 368.)*

**§ 1475.** In any case where a reservoir has been or shall hereafter under the provisions of this division be constructed, or surveyed, laid out, and proposed to be constructed, for the storage of water for a system, which water is to be used at one or more points under appropriations of water and rights held and owned by the person owning the reservoir site and constructing the reservoir, the reservoir, appropriations, and rights shall, in the discretion of the board constitute a single enterprise and unit, and work of constructing the reservoir, or work on any one of the appropriations shall, in the discretion of the board, be sufficient to maintain and preserve all applications for appropriations and rights thereunder.

*(Amended by Stats. 1957, Ch. 1932.)*

**Article 5. Applications in Aid of State Water Plan [1480. - 1480.]**

*(Article 5 enacted by Stats. 1943, Ch. 368.)*

**§ 1480.** An application by the Department of Water Resources, or an application by the Department of Finance prior to July 5, 1956, in aid of any general or coordinated water plan has such priority as is now or may hereafter be provided by law.

*(Amended by Stats. 1957, Ch. 1932.)*

**Article 6. Applications by Governmental Agencies Discharging Disposal Water [1485. - 1486.]**

*(Article 6 added by Stats. 1961, Ch. 2143.)*

**§ 1485.** Any municipality, governmental agency, or political subdivision operating waste disposal plants producing disposal water meeting the requirements of the appropriate regional board, and disposing of said water in the San Joaquin River may file an application for a permit to appropriate an equal amount of water, less diminution by seepage, evaporation, transpiration or other natural causes between the point of discharge and the point of recovery, downstream from said disposal plant and out of the San Joaquin River or the Sacramento-San Joaquin Delta. A permit to appropriate such amount of water may be granted by the board upon such terms and conditions as in the board's judgment are necessary for the protection of the rights of others. Water so appropriated may be sold or utilized for any beneficial purpose. The right to the use of water granted by this section shall not include water flowing in underground streams.

The Legislature finds and declares that the problems incident to the full utilization of the waters of the San Joaquin River and the Sacramento-San

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Joaquin Delta into which it flows, are unique and that a general law cannot be made applicable thereto.

*(Amended by Stats. 1967, Ch. 284.)*

**§ 1486.** (a) The Sacramento Regional County Sanitation District, and any successor thereto, with respect to treated wastewater produced by the sanitation district that meets the requirements of the Central Valley Regional Water Quality Control Board, as may be amended or modified, and that is discharged into the Sacramento River, may file an application for a permit to appropriate an amount of water up to the amount of treated wastewater that is discharged into the Sacramento River, less diminution by seepage, evaporation, transportation, or other natural causes between the point of discharge from its wastewater treatment plant and the point of diversion out of the Sacramento River or the Sacramento-San Joaquin Delta.

(b) Upon application for a permit to appropriate water pursuant to subdivision (a), the board may grant the permit subject to the terms and conditions as in the board's judgment are necessary for the protection of the rights of any legal user of the water.

(c) Prior to the board granting a permit under subdivision (b), the board shall comply with the provisions of this part, and other applicable law, and may impose terms and conditions authorized thereunder.

(d) Water appropriated in accordance with this section may be sold or utilized for any beneficial purpose.

*(Amended by Stats. 2012, Ch. 162, Sec. 184. Effective January 1, 2013.)*

## **Article 7. Priority of Applications for Hydroelectric Power [1490. - 1491.]**

*(Article 7 added by Stats. 1982, Ch. 1484, Sec. 2.)*

**§ 1490.** Applications or petitions for retrofit hydroelectric plants at existing dams, canals, or conduits where the streamflow regime will not be changed and where there will be no significant adverse environmental impacts shall receive expedited processing by the board. The applicant shall not be required to show a need for the power that will be generated by the plant unless protests are filed that are not resolved.

*(Added by Stats. 1982, Ch. 1484, Sec. 2.)*

**§ 1491.** Applications for hydroelectric powerplants with a generating capacity not to exceed five megawatts, which do not impound water during times of high waterflow to be used to generate power during times of low waterflow, and which will not have any significant adverse environmental impacts shall receive expedited processing by the board. The applicant shall not be required to show a need for the power that will be generated by the plant unless protests are filed against the project that are not resolved.

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*(Added by Stats. 1982, Ch. 1484, Sec. 2.)*

## **CHAPTER 8. WATER RIGHT FEES [1525. - 1560.]**

*(Chapter 8 repealed and added by Stats. 2003, Ch. 741, Sec. 85.)*

### **Article 1. Fee Schedules [1525. - 1530.]**

*(Article 1 added by Stats. 2003, Ch. 741, Sec. 85.)*

**§ 1525.** (a) Each person or entity who holds a permit or license to appropriate water, and each lessor of water leased under Chapter 1.5 (commencing with Section 1020) of Part 1, shall pay an annual fee according to a fee schedule established by the board.

(b) Each person or entity who files any of the following shall pay a fee according to a fee schedule established by the board:

(1) An application for a permit to appropriate water.

(2) A registration of appropriation for a small domestic use, small irrigation use, or livestock stockpond use.

(3) A petition for an extension of time within which to begin construction, to complete construction, or to apply the water to full beneficial use under a permit.

(4) A petition to change the point of diversion, place of use, or purpose of use, under a permit, license, or registration.

(5) A petition to change the conditions of a permit or license, requested by the permittee or licensee, that is not otherwise subject to paragraph (3) or (4).

(6) A petition to change the point of discharge, place of use, or purpose of use, of treated wastewater, requested pursuant to Section 1211.

(7) An application for approval of a water lease agreement.

(8) A request for release from priority pursuant to Section 10504.

(9) An application for an assignment of a state-filed application pursuant to Section 10504.

(c) The board shall set the fee schedule authorized by this section so that the total amount of fees collected pursuant to this section equals that amount necessary to recover costs incurred in connection with the issuance, administration, review, monitoring, and enforcement of permits, licenses, certificates, and registrations to appropriate water, water leases, and orders approving changes in point of discharge, place of use, or purpose of use of treated wastewater. The board may include, as recoverable costs, but is not limited to including, the costs incurred in reviewing applications, registrations, petitions and requests, prescribing terms of permits, licenses, registrations, and change orders, enforcing and evaluating compliance with permits, licenses, certificates, registrations, change orders, and water leases, inspection, monitoring, planning, modeling, reviewing documents prepared for the purpose of regulating the diversion and use of water, applying and enforcing the

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prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division, and the administrative costs incurred in connection with carrying out these actions.

(d) (1) The board shall adopt the schedule of fees authorized under this section as emergency regulations in accordance with Section 1530.

(2) For filings subject to subdivision (b), the schedule may provide for a single filing fee or for an initial filing fee followed by an annual fee, as appropriate to the type of filing involved, and may include supplemental fees for filings that have already been made but have not yet been acted upon by the board at the time the schedule of fees takes effect.

(3) The board shall set the amount of total revenue collected each year through the fees authorized by this section at an amount equal to the amounts appropriated by the Legislature for expenditure for support of water rights program activities from the Water Rights Fund established under Section 1550, taking into account the reserves in the Water Rights Fund. The board shall review and revise the fees each fiscal year as necessary to conform with the amounts appropriated. If the board determines that the revenue collected during the preceding year was greater than, or less than, the amounts appropriated, the board may further adjust the annual fees to compensate for the over or under collection of revenue.

(e) Annual fees imposed pursuant to this section for the 2003–04 fiscal year shall be assessed for the entire 2003–04 fiscal year.

*(Amended by Stats. 2011, Ch. 579, Sec. 9. Effective January 1, 2012.)*

**§ 1528.** Each person or entity who files a proof of claim under Article 4 (commencing with Section 2575) of Chapter 3 of Part 3 shall pay a fee according to a fee schedule established by the board. The board shall adopt the schedule of fees pursuant to Section 1530. The board shall establish the fees so as to be sufficient on the average to pay the administrative expenses of the board in processing, reviewing, and preparing a report on the claims submitted to the board.

*(Repealed and added by Stats. 2003, Ch. 741, Sec. 85. Effective January 1, 2004.)*

**§ 1529.** Each person or entity who files a notice pursuant to Part 5 (commencing with Section 4999) shall pay an annual fee according to a fee schedule established by the board. The board shall adopt the schedule of fees pursuant to Section 1530. The board shall set the filing fees in an amount that is sufficient, on the average, to pay the administrative expenses of the board in processing, compiling, and retaining the notices.

*(Repealed and added by Stats. 2003, Ch. 741, Sec. 85. Effective January 1, 2004.)*

**§ 1529.5.** (a) The board shall adopt a schedule of fees pursuant to Section 1530 to recover costs incurred in administering Chapter 11 (commencing with

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Section 10735) of Part 2.74 of Division 6. Recoverable costs include, but are not limited to, costs incurred in connection with investigations, facilitation, monitoring, hearings, enforcement, and administrative costs in carrying out these actions.

(b) The fee schedule adopted under this section may include, but is not limited to, the following:

(1) A fee for participation as a petitioner or party to an adjudicative proceeding.

(2) A fee for the filing of a report pursuant to Part 5.2 (commencing with Section 5200) of Division 2.

(c) Consistent with Section 3 of Article XIII A of the California Constitution, the board shall set the fees under this section in an amount sufficient to cover all costs incurred and expended from the Water Rights Fund for the purposes of Part 5.2 (commencing with Section 5200) and Chapter 11 (commencing with Section 10735) of Part 2.74 of Division 6. In setting these fees, the board is not required to fully recover these costs in the year or the year immediately after the costs are incurred, but the board may provide for recovery of these costs over a period of years.

*(Added by Stats. 2014, Ch. 347, Sec. 7. Effective January 1, 2015.)*

**§ 1530.** (a) The board shall adopt, by emergency regulation, the schedules of fees authorized under this article. The emergency regulation may include provisions concerning the administration and collection of the fees. The fee schedules may be graduated in accordance with the number of diversions or the amount of water involved. The board shall periodically adjust the amount of the fees specified in the schedule in accordance with this article.

(b) The emergency regulations adopted pursuant to this section, any amendment thereto, or subsequent adjustments to the regulations, shall be adopted by the board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the board, or any adjustment to an annual fee made by the board pursuant to this section, shall remain in effect until revised by the board.

*(Repealed and added by Stats. 2003, Ch. 741, Sec. 85. Effective January 1, 2004.)*

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**Article 2. Collection and Enforcement [1535. - 1541.]**

*(Article 2 added by Stats. 2003, Ch. 741, Sec. 85.)*

**§ 1535.** (a) Any fee subject to this chapter that is required in connection with the filing of an application, registration, request or proof of claim, other than an annual fee required after the period covered by the initial filing fee, shall be paid to the board.

(b) If a fee established under subdivision (b) of Section 1525, Section 1528, or Section 13160.1 is not paid when due, the board may cancel the application, registration, petition, request, or claim, or may refer the matter to the State Board of Equalization for collection of the unpaid fee.

*(Repealed and added by Stats. 2003, Ch. 741, Sec. 85. Effective January 1, 2004.)*

**§ 1536.** All annual fees, other than the initial filing fee required in connection with the filing of an application, registration, petition, or request, or proof of claim, and all unpaid fees and expenses referred to the State Board of Equalization for collection pursuant to subdivision (b) of Section 1535 or Section 2868, shall be paid to the State Board of Equalization.

*(Repealed and added by Stats. 2003, Ch. 741, Sec. 85. Effective January 1, 2004.)*

**§ 1537.** (a) The State Board of Equalization shall collect any fee or expense required to be paid to the State Board of Equalization under this chapter.

(b) (1) The State Board of Equalization shall collect the fees pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

(2) Notwithstanding the appeal provisions in the Fee Collection Procedures Law, a determination by the board that a person or entity is required to pay a fee, or a determination by the board regarding the amount of that fee, is subject to review under Chapter 4 (commencing with Section 1120) of Part 1 and is not subject to a petition for redetermination by the State Board of Equalization.

(3) Notwithstanding the refund provisions in the Fee Collection Procedures Law, the State Board of Equalization shall not accept any claim for refund that is based on the assertion that a determination by the board improperly or erroneously calculated the amount of a fee, or incorrectly determined that the person or entity is subject to the fee, unless that determination has been set aside by the board or a court reviewing the determination of the board.

(4) This subdivision shall not be construed to apply Chapter 4 (commencing with Section 1120) of Part 1 to the adoption of regulations under this chapter or to a determination of expenses under Part 3 (commencing with Section 2000).

(c) The board shall provide to the State Board of Equalization the name and address of each person or entity who is liable for a fee or expense, the amount of the fee or expense, and the due date.

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*(Added by Stats. 2003, Ch. 741, Sec. 85. Effective January 1, 2004.)*

**§ 1538.** In any proceeding pursuant to Section 1052 in which it is determined that there has been a violation of the prohibition against the unauthorized diversion or use of water subject to this division, the board or court, as the case may be, may impose an additional liability in the amount of any annual fees that would have been required under this division if the diversion or use had been authorized by a permit or license to appropriate water.

*(Added by Stats. 2003, Ch. 741, Sec. 85. Effective January 1, 2004.)*

**§ 1539.** If a permit or license holder fails to pay an annual fee imposed pursuant to subdivision (a) of Section 1525 for a period of five years, the board may revoke the permit or license in accordance with the procedures for revocation specified in Section 1241.

*(Added by Stats. 2003, Ch. 741, Sec. 85. Effective January 1, 2004.)*

**§ 1540.** If the board determines that the person or entity on whom a fee or expense is imposed will not pay the fee or expense based on the fact that the fee payer has sovereign immunity under Section 1560, the board may allocate the fee or expense, or an appropriate portion of the fee or expense, to persons or entities who have contracts for the delivery of water from the person or entity on whom the fee or expense was initially imposed. The allocation of the fee or expense to these contractors does not affect ownership of any permit, license, or other water right, and does not vest any equitable title in the contractors.

*(Repealed and added by Stats. 2003, Ch. 741, Sec. 85. Effective January 1, 2004.)*

**§ 1541.** This article applies to any fee established or required to be paid under Article 1 (commencing with Section 1525), to any fee or expense set to cover the expenses of the board under Part 3 (commencing with Section 2000), and to any fee set under Section 13160.1 that is required to be deposited in the Water Rights Fund.

*(Added by Stats. 2003, Ch. 741, Sec. 85. Effective January 1, 2004.)*

### **Article 3. Water Rights Fund [1550. - 1552.]**

*(Article 3 added by Stats. 2003, Ch. 741, Sec. 85.)*

**§ 1550.** There is in the State Treasury a Water Rights Fund, which is hereby established.

*(Repealed and added by Stats. 2003, Ch. 741, Sec. 85. Effective January 1, 2004.)*

**§ 1551.** All of the following shall be deposited in the Water Rights Fund:

(a) All fees, expenses, and penalties collected by the board or the State Board of Equalization under this chapter and Part 3 (commencing with Section 2000).

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(b) All funds collected under Section 1052, Article 4 (commencing with Section 1845) of Chapter 12, or Section 5107.

(c) All fees collected under Section 13160.1 in connection with certificates for activities involving hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission.

*(Amended by Stats. 2014, Ch. 3, Sec. 11. Effective March 1, 2014.)*

**§ 1552.** Except as provided in subdivision (e) of Section 1058.5, moneys in the Water Rights Fund are available for expenditure, upon appropriation by the Legislature, for the following purposes:

(a) For expenditure by the State Board of Equalization in the administration of this chapter and the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code) in connection with any fee or expense subject to this chapter.

(b) For the payment of refunds, pursuant to Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code, of fees or expenses collected pursuant to this chapter.

(c) For expenditure by the board for the purposes of carrying out this division, Division 1 (commencing with Section 100), Part 2 (commencing with Section 10500) and Chapter 11 (commencing with Section 10735) of Part 2.74 of Division 6, and Article 7 (commencing with Section 13550) of Chapter 7 of Division 7.

(d) For expenditures by the board for the purposes of carrying out Sections 13160 and 13160.1 in connection with activities involving hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission.

(e) For expenditures by the board for the purposes of carrying out Sections 13140 and 13170 in connection with plans and policies that address the diversion or use of water.

*(Amended by Stats. 2015, Ch. 27, Sec. 14. Effective June 24, 2015.)*

#### **Article 4. Sovereign Immunity [1560. - 1560.]**

*(Article 4 added by Stats. 2003, Ch. 741, Sec. 85.)*

**§ 1560.** (a) The fees and expenses established under this chapter and Part 3 (commencing with Section 2000) apply to the United States and to Indian tribes, to the extent authorized under federal or tribal law.

(b) If the United States or an Indian tribe declines to pay a fee or expense, or the board determines that the United States or the Indian tribe is likely to decline to pay a fee or expense, the board may do any of the following:

(1) Initiate appropriate action to collect the fee or expense, including any appropriate enforcement action for failure to pay the fee or expense, if the board determines that federal or tribal law authorizes collection of the fee or expense.

(2) Allocate the fee or expense, or an appropriate portion of the fee or expense, in accordance with Section 1540. The board may make this allocation as part of the emergency regulations adopted pursuant to Section 1530.

(3) Enter into a contractual arrangement that requires the United States or the Indian tribe to reimburse the board, in whole or in part, for the services furnished by the board, either directly or indirectly, in connection with the activity for which the fee or expense is imposed.

(4) Refuse to process any application, registration, petition, request, or proof of claim for which the fee or expense is not paid, if the board determines that refusal would not be inconsistent with federal law or the public interest.  
*(Repealed and added by Stats. 2003, Ch. 741, Sec. 85. Effective January 1, 2004.)*

## **CHAPTER 9. LICENSES [1600. - 1675.2.]**

*(Chapter 9 enacted by Stats. 1943, Ch. 368.)*

### **Article 1. Report of Completion [1600. - 1600.]**

*(Article 1 enacted by Stats. 1943, Ch. 368.)*

**§ 1600.** Immediately upon completion of the construction of works and application of the water to beneficial use the permittee shall report the completion to the board.

*(Amended by Stats. 1963, Ch. 289.)*

### **Article 2. Examination and Inspection [1605. - 1605.]**

*(Article 2 enacted by Stats. 1943, Ch. 368.)*

**§ 1605.** The board shall as soon as practicable after receiving the report of completion cause to be made a full inspection and examination of the works constructed and the use of water therefrom. The permittee shall furnish the board with such records, data, and information as may be required to enable the board to determine the amount of water that has been applied to beneficial use and whether the construction of the works and the use of the water therefrom is in conformity with law, the rules and regulations of the board, and the permit.

*(Amended by Stats. 1963, Ch. 289.)*

### **Article 3. Issuance or Refusal of License [1610. - 1611.]**

*(Article 3 enacted by Stats. 1943, Ch. 368.)*

**§ 1610.** If the determination of the board as to completion is favorable to the permittee, the board shall issue a license which confirms the right to the appropriation of such an amount of water as has been determined to have been applied to beneficial use.

*(Amended by Stats. 1963, Ch. 289.)*

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**§ 1610.5.** Before issuing a license for an amount of water or season of use less than that specified in the permit, the board shall either obtain the consent of the permittee or afford him an opportunity to (a) show cause why the amount or season of use should not be reduced or, (b) request an extension of time pursuant to Section 1398.

*(Added by Stats. 1963, Ch. 289.)*

**§ 1611.** If the board determines that the construction and condition of the works or the use of water therefrom are not in conformity with the law, the rules and regulations of the board, or the terms of the permit, it may revoke the permit in the manner provided in Article 5 (commencing with Section 1410) of Chapter 6 of this part. The board may in its discretion allow a reasonable time for the permittee to correct discrepancies in the works or use of water before taking action to revoke the permit.

*(Amended by Stats. 1963, Ch. 289.)*

### **Article 5. Contents and Conditions of License [1625. - 1631.]**

*(Article 5 enacted by Stats. 1943, Ch. 368.)*

**§ 1625.** Each license shall be in such form and contain such terms as may be prescribed by the board.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1626.** All licenses shall be under the terms and conditions of this division.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1627.** A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division but no longer.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1628.** Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1629.** Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division, or for any rights granted or acquired under the provisions of this division, in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or

otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1630.** At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1631.** In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property can not agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

*(Enacted by Stats. 1943, Ch. 368.)*

## **Article 6. Filing of Licenses and Orders with County Recorder [1650. - 1651.]**

*(Article 6 enacted by Stats. 1943, Ch. 368.)*

**§ 1650.** A true copy of each license issued or of each order modifying or changing a license shall within 30 days after issuance thereof be recorded by the board in the office of the recorder of the county in which the point of diversion specified in the license lies or in case there are points of diversion lying in more than one county then in each of those counties in which a point of diversion lies and in case the place or places of use specified in the license are in different counties than the point or points of diversion also in the county or counties in which the place or places of use lie.

*(Amended by Stats. 1959, Ch. 51.)*

**§ 1651.** Whenever an order revoking a license in whole or in part becomes final a true copy of the order shall be recorded promptly by the board in the office or offices in which a copy of the license affected is recorded.

*(Amended by Stats. 1959, Ch. 51.)*

## **Article 7. Revocation of Licenses [1675. - 1675.2.]**

*(Article 7 enacted by Stats. 1943, Ch. 368.)*

**§ 1675.** (a) If, at any time after a license is issued, the board finds that the licensee has not put the water granted under the license to a useful or beneficial

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purpose in conformity with this division or that the licensee has ceased to put the water to that useful or beneficial purpose, or that the licensee has failed to observe any of the terms and conditions in the license, the board may revoke the license and declare the water to be subject to appropriation in accordance with this part.

(b) The board may revoke the license upon request of the licensee or after due notice to the licensee and after a hearing, when a hearing is requested by the licensee pursuant to Section 1675.1.

(c) As used in this section "licensee" includes the heirs, successors, or assigns of the licensee.

*(Amended by Stats. 2010, Ch. 288, Sec. 14. Effective January 1, 2011.)*

**§ 1675.1.** The notice of proposed revocation of the license pursuant to Section 1675 shall contain a statement of facts and information upon which the proposed revocation is based, and shall include a statement substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the licensee is delivered or mailed to the board within 15 days after receipt of this notice, the board may act upon the proposed revocation of the license without a hearing. Any request for a hearing may be made by delivering or mailing the request to the board at the address given on the notice.

*(Added by Stats. 1971, Ch. 794.)*

**§ 1675.2.** In any case when a license is revoked without a hearing, as provided in Section 1675.1, the licensee, within 90 days of the date of the order of revocation, may file with the board a request to set aside the revocation, and the board, for good cause shown, may reinstate the license.

*(Added by Stats. 1971, Ch. 794.)*

## **CHAPTER 10. CHANGE OF POINT OF DIVERSION, PLACE OF USE, OR PURPOSE OF USE [1700. - 1707.]**

*(Chapter 10 enacted by Stats. 1943, Ch. 368.)*

**§ 1700.** Water appropriated under the Water Commission Act or this code for one specific purpose shall not be deemed to be appropriated for any other or different purpose, but the purpose of the use of such water may be changed as provided in this code.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1701.** At any time after notice of an application is given, an applicant, permittee, or licensee may change the point of diversion, place of use, or purpose of use from that specified in the application, permit, or license; but such change may be made only upon permission of the board.

*(Amended by Stats. 1957, Ch. 1932.)*

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**§ 1701.1.** A petition for change filed after notice of an application shall meet all of the following requirements:

- (a) State the name and address of the petitioner.
- (b) Be signed by the petitioner, or the petitioner's agent or attorney.
- (c) Set forth amendments to the application or an amended application reflecting the proposed change, including any information necessary for the amended application to comply with Section 1260.
- (d) Include sufficient information to demonstrate a reasonable likelihood that the proposed change will not injure any other legal user of water.
- (e) Contain other appropriate information and be in the form required by applicable regulations.

*(Added by Stats. 2001, Ch. 315, Sec. 6. Effective January 1, 2002.)*

**§ 1701.2.** A petition for change in a permit or license shall meet all of the following requirements:

- (a) State the name and address of the petitioner.
- (b) Be signed by the petitioner, or the petitioner's agent or attorney.
- (c) Include all information reasonably available to the petitioner, or that can be obtained from the Department of Fish and Wildlife, concerning the extent, if any, to which fish and wildlife would be affected by the change, and a statement of any measures proposed to be taken for the protection of fish and wildlife in connection with the change.
- (d) Include sufficient information to demonstrate a reasonable likelihood that the proposed change will not injure any other legal user of water.
- (e) Contain other appropriate information and be in the form required by applicable regulations.

*(Amended by Stats. 2015, Ch. 683, Sec. 57. Effective January 1, 2016.)*

**§ 1701.3.** (a) After a petition is filed, the board may request additional information reasonably necessary to clarify, amplify, correct, or otherwise supplement the information required to be submitted under this chapter. The board shall provide a reasonable period for submitting the information.

(b) The additional information may include, but need not be limited to, any of the following:

- (1) Information needed to demonstrate that the change will not injure any other legal user of water.
- (2) Information needed to demonstrate that the change will comply with any applicable requirements of the Fish and Game Code or the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.).
- (3) Information needed to comply with Division 13 (commencing with Section 21000) of the Public Resources Code.

*(Amended by Stats. 2010, Ch. 288, Sec. 15. Effective January 1, 2011.)*

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**§ 1701.4.** If, within the period provided, the petitioner does not provide the information requested pursuant to Section 1701.3, the board shall cancel the petition, unless, for good cause shown, the board allows additional time to submit the requested information.

*(Added by Stats. 2001, Ch. 315, Sec. 9. Effective January 1, 2002.)*

**§ 1702.** Before permission to make such a change is granted the petitioner shall establish, to the satisfaction of the board, and it shall find, that the change will not operate to the injury of any legal user of the water involved.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1703.** After filing a petition for permission to make a change, the petitioner, in case the board so requires, shall cause notice thereof to be given or published in the manner prescribed by the board. In all cases the petitioner shall notify the Department of Fish and Wildlife in writing of the proposed change.

*(Amended by Stats. 2015, Ch. 683, Sec. 58. Effective January 1, 2016.)*

**§ 1703.1.** Any interested person, within the time allowed in the notice of petition, or within the time the board may allow for good cause shown, may file with the board a written protest against approval of the petition.

*(Added by Stats. 2001, Ch. 315, Sec. 10. Effective January 1, 2002.)*

**§ 1703.2.** The protest shall meet all of the following requirements:

(a) State the name and address of the protestant.

(b) Be signed by the protestant, or the protestant's agent or attorney.

(c) Clearly and specifically set forth the protestant's objections to the approval of the petition, and state the bases for these objections.

(d) Contain other appropriate information and be in the form required by applicable regulations.

(e) Be served on the petitioner by the protestant by mailing a duplicate copy of the protest to the petitioner or through service undertaken in another manner determined to be adequate by the board.

*(Added by Stats. 2001, Ch. 315, Sec. 11. Effective January 1, 2002.)*

**§ 1703.3.** The board may request from the protestant additional information reasonably necessary to clarify, amplify, correct, or otherwise supplement the information required to be submitted pursuant to Section 1703.2. The board shall provide a reasonable period for submitting the information, and may allow additional time for good cause shown.

*(Added by Stats. 2001, Ch. 315, Sec. 12. Effective January 1, 2002.)*

**§ 1703.4.** The protestant and the petitioner shall make a good faith effort to resolve the protest not later than 180 days from the date the period provided pursuant to Section 1703.1 expires. For good cause, the board may allow

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additional time for the protestant and the petitioner to attempt to resolve the protest.

*(Added by Stats. 2001, Ch. 315, Sec. 13. Effective January 1, 2002.)*

**§ 1703.5.** The board may request from the protestant or the petitioner additional information that the board determines is reasonably necessary to attempt to resolve the protest. The board shall provide a reasonable period for submitting the information, and may allow additional time for good cause shown.

*(Added by Stats. 2001, Ch. 315, Sec. 14. Effective January 1, 2002.)*

**§ 1703.6.** (a) The board may cancel a protest or petition for failure to provide information requested by the board under this chapter within the period provided.

(b) Except as provided in subdivisions (c) and (d), the board shall not cancel a protest for failure to submit information not in the possession or under the control of the protestant if the protest meets the requirements of Section 1703.2 and the petitioner is or could be required to submit the information under Section 1701.1, 1701.2, or 1701.3.

(c) If a protest is based on injury to a legal user of water, the board may cancel the protest if the protestant fails to submit any of the following information requested by the board:

(1) Information that the protestant is required to submit to the board to comply with Part 5.1 (commencing with Section 5100) during any period after the protest is filed.

(2) Information that is reasonably necessary to determine if the protestant is a legal user of water.

(3) Information concerning the protestant's historical, current, or proposed future diversion and use of water that is reasonably necessary to determine if the proposed change will result in injury to the protestant's exercise of its water right or other legal use of water.

(d) If the protest is based on an allegation other than injury to a legal user of water, the board may cancel the protest for failure to submit information requested by the board if the board determines both of the following:

(1) The public review period has expired for any draft environmental document or negative declaration required to be circulated for public review and comment pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) In the absence of the requested information, there is no substantial evidence in light of the whole record to support the allegation.

(e) If a protest is subject to both subdivisions (c) and (d), the part of the protest subject to subdivision (c) may be canceled pursuant to subdivision (c)

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and the part of the protest subject to subdivision (d) may be canceled pursuant to subdivision (d).

*(Amended by Stats. 2010, Ch. 288, Sec. 16. Effective January 1, 2011.)*

**§ 1704.** (a) The board, after a hearing, may approve with conditions, or deny, a petition.

(b) Notice of hearing shall be given by mailing the notice not less than 20 days before the date of hearing to the petitioner and to any protestant by registered mail.

(c) (1) The board may, but is not required to, hold a hearing prior to approving an unprotested petition.

(2) The board may, but is not required to, hold a hearing if the board determines that undisputed facts support the approval of the petition and there is no disputed issue of material fact.

(3) The board may, but is not required to, hold a hearing prior to denying a petition, if, after notice, the board determines that the petition is defective, the petition fails to provide information requested by the board, or undisputed facts support the denial of the petition and there is no disputed issue of material fact.

*(Amended by Stats. 2001, Ch. 315, Sec. 16. Effective January 1, 2002.)*

**§ 1704.1.** The Division of Water Rights shall conduct a field investigation of all minor protested petitions for change. The board shall notify the parties of the field investigation not less than 20 days prior to conducting the field investigation, to enable the parties to attend and present information to the board.

*(Amended by Stats. 1997, Ch. 323, Sec. 17. Effective January 1, 1998.)*

**§ 1704.2.** The Division of Water Rights may request the parties to submit information in support of their positions. The Division of Water Rights may request information before, during, or after the field investigation. After the field investigation, the Division of Water Rights may conduct additional proceedings in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

*(Repealed and added by Stats. 1997, Ch. 323, Sec. 19. Effective January 1, 1998.)*

**§ 1704.3.** Based upon the field investigation and any other information obtained under this chapter, the Division of Water Rights shall issue an order acting on the minor petition for change unless the board in its discretion determines that additional proceedings should be conducted under Section 183. An order of the Division of Water Rights is subject to review as provided in Chapter 4 (commencing with Section 1120) of Part 1.

*(Repealed and added by Stats. 1997, Ch. 323, Sec. 21. Effective January 1, 1998.)*

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**§ 1704.4.** For purposes of this chapter, a minor petition for change shall mean any petition which does not involve direct diversions in excess of three cubic-feet per second or storage in excess of 200 acre-feet per year.  
*(Added by Stats. 1980, Ch. 933, Sec. 11.)*

**§ 1705.** After the hearing the board shall grant or refuse, as the facts warrant, permission to change the point of diversion, place of use, or purpose of use.  
*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1706.** The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code may change the point of diversion, place of use, or purpose of use if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made.  
*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1707.** (a) (1) Any person entitled to the use of water, whether based upon an appropriative, riparian, or other right, may petition the board pursuant to this chapter, Chapter 6.6 (commencing with Section 1435) or Chapter 10.5 (commencing with Section 1725) for a change for purposes of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation in, or on, the water.

(2) The petition may be submitted for any of the purposes described in paragraph (1) and may, but is not required to, be submitted in combination with a petition to make any other change authorized pursuant to this part. The petition shall specify the time, location, and scope of the requested change, and other relevant information relating thereto.

(b) The board may approve the petition filed pursuant to subdivision (a), subject to any terms and conditions which, in the board's judgment, will best develop, conserve, and utilize, in the public interest, the water proposed to be used as part of the change, whether or not the proposed use involves a diversion of water, if the board determines that the proposed change meets all of the following requirements:

- (1) Will not increase the amount of water the person is entitled to use.
- (2) Will not unreasonably affect any legal user of water.
- (3) Otherwise meets the requirements of this division.

(c) (1) Upon the request of the petitioner, the board may specify, as part of its approval of the petition, that the water that is subject to the approval pursuant to this section shall be in addition to water that is required, if any, to be used for instream purposes to satisfy any applicable federal, state, or local regulatory requirements governing water quantity, water quality, instream flows, fish and wildlife, wetlands, recreation, and other instream beneficial uses. If the request is approved by the board, state and local agencies, as well as the

courts, shall not credit the water subject to that petition towards compliance with any of the regulatory requirements described in this subdivision. A federal agency shall comply with the requirement imposed by this paragraph to the extent required by federal law, or to the extent that it chooses to comply.

(2) For the purposes of this subdivision, “requirements” includes requirements or obligations that have not been formally established or allocated at the time of the petition, and obligations under any agreement entered into to meet those requirements. Neither any petition filed pursuant to this section nor any documents or statements made in connection therewith shall be construed or used as an admission, evidence, or indication of any obligation to meet any of the requirements described in this subdivision.

(d) Except as provided in subdivision (c), water that is subject to a petition granted pursuant to this section shall be used to meet, in whole or in part, any requirement described in subdivision (c) if any of these requirements exist. The water shall be credited to the petitioner, or to any other person or entity designated by the petitioner, whenever that person or entity has, or may have, obligations to meet one or more of the requirements described in subdivision (c). The water shall be credited towards compliance with any requirements described in subdivision (c), by state and local agencies, as well as the courts. A federal agency shall comply with the requirement imposed by this subdivision to the extent required by federal law, or to the extent that it chooses to comply. *(Amended by Stats. 1999, Ch. 938, Sec. 7. Effective January 1, 2000.)*

## **CHAPTER 10.5. CHANGE OF POINT OF DIVERSION, PLACE OF USE, OR PURPOSE OF USE, INVOLVING THE TRANSFER OF WATER [1725. - 1745.11.]**

*(Chapter 10.5 repealed and added by Stats. 1988, Ch. 1145, Sec. 3.)*

### **Article 1. Temporary Changes [1725. - 1732.]**

*(Article 1 added by Stats. 1988, Ch. 1145, Sec. 3.)*

**§ 1725.** A permittee or licensee may temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses. For purposes of this article, “consumptively used” means the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.

*(Repealed and added by Stats. 1988, Ch. 1145, Sec. 3.)*

**§ 1726.** (a) (1) A permittee or licensee who proposes a temporary change shall submit to the board a petition to change the terms of the permit or license

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as required to accomplish the proposed temporary change. The petition for a temporary change shall be filed by the permittee or licensee. If the proposed temporary change is for the benefit of a contractor or user supplied directly or indirectly by the permittee or licensee, the permittee or licensee may authorize the contractor or user to participate as a copetitioner. The permittee or licensee shall identify any copetitioner in the petition.

(2) A contractor or user described in paragraph (1), whether or not designated as a copetitioner, and the person to whom the water is proposed to be transferred, shall be named as parties to the proceeding, with the same rights to receive notices, respond to board determinations, and petition for writ of mandate as the petitioner.

(b) A petition shall include both of the following:

(1) Reference to the permit or license that serves as the basis for the water transfer.

(2) A written description of the changes in water storage, timing, and point of diversion, place and purpose of use, timing and point of return flow, and water quality of instream flows that are likely to occur as a result of the proposed temporary change.

(c) A petitioner shall provide a copy of the petition to the Department of Fish and Wildlife, the board of supervisors of the county or counties in which the petitioner currently stores or uses the water subject to the petition, and the board of supervisors of the county or counties to which the water is proposed to be transferred.

(d) Within 10 days of the date of submission of a petition to the board, the petitioner shall publish in not less than one newspaper of general circulation, in the county or counties in which the petitioner currently stores or uses the water subject to the petition, a notice of the petition and a brief description of the terms of the proposed temporary change. The board shall, in a timely manner, provide to the petitioner a list of water right holders of record on file with the board who may be affected by the transfer, and the petitioner shall provide written notice to those water right holders not later than 10 days after the date on which the petition is submitted. The board shall post the notice of petition on its Internet Web site not later than 10 days after the date on which the petition is submitted. The notice of the petition shall specify the date on which comments are due. The board may impose on the petitioner any other notice requirement it determines to be necessary.

(e) Within 10 days of the date of receipt of a petition, the board shall commence an investigation of the proposed temporary change. Pursuant to that investigation, the board shall determine if the water proposed to be transferred would have been consumptively used or stored pursuant to the petitioner's permit or license in the absence of the proposed transfer or conserved pursuant to Section 1011. The board also shall evaluate the changes in water storage,

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timing and point of diversion, place and purpose of use, timing and point of return flow, water quality, and instream flows, and other changes that are likely to occur as a result of the proposed temporary change.

(f) Water users that may be affected by a proposed temporary change and any other interested party may file a written comment regarding a petition with the board. Comments shall be filed not later than 30 days after the date that the notice was published pursuant to subdivision (d). The board shall evaluate and take into consideration all comments that are filed in a timely manner.

(g) (1) Except as specified in paragraphs (2) and (3), the board shall render a decision on the petition not later than 35 days after the date that investigation commenced or the date that the notice was published, whichever is later. The board's decision shall be in accordance with the substantive standards set forth in Section 1727. The board shall explain its decision in writing and shall send copies of the decision to the petitioner, the Department of Fish and Wildlife, the board of supervisors of the county or counties described in subdivision (c), the proposed transferee, and any party who has filed a written comment in accordance with subdivision (f).

(2) If comments are filed in accordance with subdivision (f), or for any other good cause, the board may extend the date of its decision for up to 20 days.

(3) If the board or the petitioner determines that an additional extension of time for a decision is necessary for the board to make the findings required by Section 1727, or that a hearing is necessary for the board to make those findings, the board may extend the time for a decision with the consent of the petitioner. If the petitioner agrees to a hearing, the board shall identify the issues for which additional evidence is required and shall fix a time and place for the hearing. The board shall provide notice of the time, place, and subject matter of the hearing to the petitioner, the Department of Fish and Wildlife, the board of supervisors of the county or counties described in subdivision (c), the water right holders of record identified pursuant to subdivision (d), the proposed transferee, and any party who has filed a written comment in accordance with subdivision (f).

*(Amended by Stats. 2015, Ch. 683, Sec. 59. Effective January 1, 2016.)*

**§ 1727.** (a) The board shall review a petition for a temporary change of water rights in accordance with this section.

(b) The board shall approve a temporary change if it determines that a preponderance of the evidence shows both of the following:

(1) The proposed temporary change would not injure any legal user of the water, during any potential hydrologic condition that the board determines is likely to occur during the proposed change, through significant changes in water

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quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows.

(2) The proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(c) The petitioner shall have the burden of establishing that a proposed temporary change would comply with paragraphs (1) and (2) of subdivision (b). If the board determines that that petitioner has established a prima facie case, the burden of proof shall shift to any party that has filed a comment pursuant to subdivision (f) of Section 1726 to prove that the proposed temporary change would not comply with paragraphs (1) and (2) of subdivision (b). The board may make a determination required by this subdivision without a hearing.

(d) In reviewing a petition for a temporary change, the board shall not modify any term or condition of the petitioner's permit or license, including those terms that protect other legal users of water, fish, wildlife, and other instream beneficial uses, except as necessary to carry out the temporary change in accordance with this article.

(e) In applying the standards set forth in paragraphs (1) and (2) of subdivision (b), the board shall not deny, or place conditions on, a temporary change to avoid or mitigate impacts that are not caused by the temporary change. Neither the Department of Fish and Wildlife, nor any other state agency that comments on the proposed temporary change, shall propose conditions to mitigate effects on fish, wildlife, or other instream beneficial uses that are not caused by the proposed temporary change. This subdivision does not limit the board, the Department of Fish and Wildlife, or any other state agency, in proceedings pursuant to any provision of law other than this article.  
*(Amended by Stats. 2015, Ch. 683, Sec. 60. Effective January 1, 2016.)*

**§ 1728.** For the purposes of this article, a temporary change means any change of point of diversion, place of use, or purpose of use involving a transfer or exchange of water or water rights for a period of one year or less. The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out. If, within a period of one year or less, the water involved in the temporary change is moved to off-stream storage outside of the watershed where the water originated, the change shall be considered a temporary change, and the water moved to off-stream storage outside the watershed where the water originated may be put to beneficial use in the place of use and for the purposes of use specified in the board's order approving the temporary change either during or after that period.

*(Amended by Stats. 1999, Ch. 938, Sec. 11.5. Effective January 1, 2000.)*

**§ 1729.** A proposed temporary change under this article shall be exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

*(Repealed and added by Stats. 1988, Ch. 1145, Sec. 3.)*

**§ 1731.** Following the expiration of the temporary change period, all rights shall automatically revert to the original holder of the right without any action by the board.

*(Added by Stats. 1988, Ch. 1145, Sec. 3.)*

**§ 1732.** The petitioner shall not initiate or increase the use of groundwater to replace surface water transferred pursuant to this article, except in compliance with Sections 1745.10 and 1745.11.

*(Repealed and added by Stats. 1999, Ch. 938, Sec. 13. Effective January 1, 2000.)*

## **Article 2. Long-Term Transfers [1735. - 1737.]**

*(Article 2 added by Stats. 1988, Ch. 1145, Sec. 3.)*

**§ 1735.** The board may consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use. A long-term transfer shall be for any period in excess of one year.

*(Repealed and added by Stats. 1988, Ch. 1145, Sec. 3.)*

**§ 1736.** The board, after providing notice and opportunity for a hearing, including, but not limited to, written notice to, and an opportunity for review and recommendation by, the Department of Fish and Wildlife, may approve such a petition for a long-term transfer where the change would not result in substantial injury to any legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses.

*(Amended by Stats. 2015, Ch. 683, Sec. 61. Effective January 1, 2016.)*

**§ 1737.** Following the expiration of the long-term transfer period, all rights shall automatically revert to the original holders of the right without any action by the board.

*(Repealed and added by Stats. 1988, Ch. 1145, Sec. 3.)*

## **Article 3. Transfer of Decreed Rights [1740. - 1740.]**

*(Article 3 added by Stats. 1988, Ch. 1145, Sec. 3.)*

**§ 1740.** Any water right determined under a court decree issued pursuant to Chapter 3 (commencing with Section 2500) of Part 3 shall be transferable pursuant to this chapter and Chapter 10 (commencing with Section 1700). The court having the appropriate jurisdiction over the decreed rights may enter a supplemental decree modifying any rights involved upon motion of the board or any party with a vested water right.

*(Amended by Stats. 2013, Ch. 634, Sec. 1. Effective January 1, 2014.)*

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**Article 4. Water Supplier Contracts [1745. - 1745.11.]**

*(Article 4 added by Stats. 1992, Ch. 481, Sec. 1.)*

**§ 1745.** As used in this article, the following terms have the following meanings:

(a) “Person” includes a public agency.

(b) “Water supplier” means a local public agency or private company supplying or storing water, or a mutual water company.

*(Added by Stats. 1992, Ch. 481, Sec. 1. Effective January 1, 1993.)*

**§ 1745.02.** A water supplier may, for a consideration to be specified in the contract, contract with persons entitled to service within the supplier’s service area to reduce or eliminate for a specified period of time their use of water supplied by the water supplier.

*(Added by Stats. 1992, Ch. 481, Sec. 1. Effective January 1, 1993.)*

**§ 1745.03.** Services performed under a contract entered into pursuant to this chapter or Chapter 3.6 (commencing with Section 380) of Division 1 which is offered generally to all persons entitled to water service from the water supplier are public services generally provided by the public agency for purposes of paragraph (3) of subdivision (a) of Section 1091.5 of the Government Code.

*(Added by Stats. 1992, Ch. 481, Sec. 1. Effective January 1, 1993.)*

**§ 1745.04.** A water supplier may contract with a state drought water bank or with any other state or local water supplier or user inside or outside the service area of the water supplier to transfer, or store as part of a transfer, water if the water supplier has allocated to the water users within its service area the water available for the water year, and no other user will receive less than the amount provided by that allocation or be otherwise unreasonably adversely affected without that user’s consent.

*(Amended by Stats. 1993, Ch. 184, Sec. 1. Effective January 1, 1994.)*

**§ 1745.05.** (a) Water stored by the water supplier and water made available from either of the following sources may be transferred by the water supplier pursuant to Section 1745.04:

(1) Conservation or alternate water supply measures taken by individual water users or by the water supplier.

(2) Water developed pursuant to a contract by a water user to reduce water use below the user’s allocation or to eliminate the use of water during the water year, including a contract to grow crops without the use of water from the water supplier, to fallow land, or to undertake other action to reduce or eliminate water use.

(b) The amount of water made available by land fallowing may not exceed 20 percent of the water that would have been applied or stored by the water supplier in the absence of any contract entered into pursuant to this article in

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any given hydrological year, unless the agency approves, following reasonable notice and a public hearing, a larger percentage.

*(Amended by Stats. 1993, Ch. 589, Sec. 188. Effective January 1, 1994.)*

**§ 1745.06.** A water supplier may transfer water pursuant to Section 1745.04 whether or not the water proposed to be transferred is surplus to the needs within the service area of the water supplier.

*(Added by Stats. 1992, Ch. 481, Sec. 1. Effective January 1, 1993.)*

**§ 1745.07.** No transfer of water pursuant to this article or any other provision of law shall cause a forfeiture, diminution, or impairment of any water rights. A transfer that is approved pursuant to this article or any other provision of law is deemed to be a beneficial use by the transferor under this code.

*(Added by Stats. 1992, Ch. 481, Sec. 1. Effective January 1, 1993.)*

**§ 1745.08.** This article is in addition to, and not a limitation on, the authority of any public agency under any other provision of law, including, but not limited to, Article 1 (commencing with Section 1725).

*(Added by Stats. 1992, Ch. 481, Sec. 1. Effective January 1, 1993.)*

**§ 1745.09.** Nothing in this article does any of the following:

(a) Creates in any person a right to require any water supplier to enter into a contract providing for the reduction or elimination of water use or for the transfer of water.

(b) Creates in any person reducing water use any interest in the water rights of the water supplier.

(c) Limits or otherwise affects the jurisdiction of any regulatory public agency over water transfers.

(d) Makes any change in existing water rights.

*(Added by Stats. 1992, Ch. 481, Sec. 1. Effective January 1, 1993.)*

**§ 1745.10.** A water user that transfers surface water pursuant to this article may not replace that water with groundwater unless the groundwater use is either of the following:

(a) Consistent with a groundwater management plan adopted pursuant to state law for the affected area.

(b) Approved by the water supplier from whose service area the water is to be transferred and that water supplier, if a groundwater management plan has not been adopted, determines that the transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin.

*(Added by Stats. 1992, Ch. 481, Sec. 1. Effective January 1, 1993.)*

**§ 1745.11.** Nothing in this article prohibits the transfer of previously recharged groundwater from an overdrafted groundwater basin or the replacement of transferred surface water with groundwater previously

recharged into an overdrafted groundwater basin, if the recharge was part of a groundwater banking operation carried out by direct recharge, by delivery of surface water in lieu of groundwater pumping, or by other means, for storage and extraction.

*(Amended by Stats. 1995, Ch. 833, Sec. 1.5. Effective January 1, 1996.)*

## **CHAPTER 11. JOINT USE AND DEVELOPMENT [1750. - 1814.]**

*(Chapter 11 enacted by Stats. 1943, Ch. 368.)*

### **Article 1. General Provisions [1750. - 1752.]**

*(Article 1 enacted by Stats. 1943, Ch. 368.)*

**§ 1750.** As used in this chapter “works” includes dams, tunnels, diversion works, ditches, and other works or constructions.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1751.** As used in this chapter “power” includes electricity, electrical power, and other power.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1752.** The board shall determine the pro rata and other costs provided for in this chapter.

*(Amended by Stats. 1957, Ch. 1932.)*

### **Article 2. Joint Occupancy and Use [1775. - 1782.]**

*(Article 2 enacted by Stats. 1943, Ch. 368.)*

**§ 1775.** If at any time it appears to the board, after a hearing of the persons interested and an investigation, that the full capacity of the works built or constructed, or being built or constructed, under an appropriation of water made pursuant to the Water Commission Act or this code has not developed or cannot develop the full capacity of the stream at the point where the works have been or are being built or constructed, and that the holder of the appropriation will not or cannot, within a period deemed to be reasonable by the board, develop the stream at that point to such capacity as the board deems to be required by the public good, the board may permit the joint occupancy and use, with the holder of the appropriation, to the extent necessary to develop the stream to its full capacity or to such portion of its capacity as may appear to the board to be advisable, by any persons applying therefor, of any such works.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1776.** The board shall take into consideration the reasonable cost of the original and new work, the good faith of the applicant, the market for water or power to be supplied by the original and the new work, and the income or use that may be required to provide fair and reasonable returns upon such cost.

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*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1777.** The applicant shall be required to pay to the person owning the works a pro rata portion of the total cost of the old and the new works.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1778.** If the water is used or to be used for irrigation or domestic purposes, the pro rata portion of the cost shall be based upon the proportion of the water used by the original and the subsequent users of the works.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1779.** If the water is used or to be used for the generation of power, the pro rata portion of the cost shall be based upon the relative amount of power capable of being developed by the original and the new works.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1780.** If a portion of the water is used or to be used for irrigation and another portion is used or to be used for the generation of power, the applicant shall pay to the person owning the works a pro rata portion of the total cost of the old and new works based upon the proportion of the relative amount of water used by each joint occupant and the income derived by each from the joint occupancy.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 1781.** If any of the water is used or to be used for purposes other than those specified in this article, the applicant shall pay to the person owning the works such a pro rata portion of the total cost of the old and new works as appears to the board to be just and equitable.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1782.** The applicant shall also pay a proper pro rata share, based as above provided in this article, of the cost of maintaining the works, on and after beginning the occupancy and use thereof.

*(Enacted by Stats. 1943, Ch. 368.)*

### **Article 3. Enlargement of Existing Works of Another [1800. - 1801.]**

*(Article 3 enacted by Stats. 1943, Ch. 368.)*

**§ 1800.** If it appears to the board that the full capacity of the works built or constructed, or being built or constructed, under an appropriation of water under the Water Commission Act or this code, will not develop the full capacity of the stream at that point, and that the public good requires it, and the board specifically so finds after investigation and hearing of the persons interested, the board may permit any person to repair, improve, add to, supplement, or enlarge, at his own expense, any works already so built or constructed or in

process of being so built or constructed under the provisions of this division, and to use the works jointly with the owners thereof.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 1801.** The repairing, improving, adding to, supplementing, or enlarging of works under this article, shall not materially interfere with the proper use thereof by the owner of the works nor materially injure the works.

*(Enacted by Stats. 1943, Ch. 368.)*

#### **Article 4. Joint Use of Capacity in Water Conveyance Facilities [1810. - 1814.]**

*(Article 4 added by Stats. 1986, Ch. 918, Sec. 2.)*

**§ 1810.** Notwithstanding any other provision of law, neither the state, nor any regional or local public agency may deny a bona fide transferor of water the use of a water conveyance facility which has unused capacity, for the period of time for which that capacity is available, if fair compensation is paid for that use, subject to the following:

(a) Any person or public agency that has a long-term water service contract with or the right to receive water from the owner of the conveyance facility shall have the right to use any unused capacity prior to any bona fide transferor.

(b) The commingling of transferred water does not result in a diminution of the beneficial uses or quality of the water in the facility, except that the transferor may, at the transferor's own expense, provide for treatment to prevent the diminution, and the transferred water is of substantially the same quality as the water in the facility.

(c) Any person or public agency that has a water service contract with or the right to receive water from the owner of the conveyance facility who has an emergency need may utilize the unused capacity that was made available pursuant to this section for the duration of the emergency.

(d) This use of a water conveyance facility is to be made without injuring any legal user of water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and without unreasonably affecting the overall economy or the environment of the county from which the water is being transferred.

*(Added by Stats. 1986, Ch. 918, Sec. 2.)*

**§ 1811.** As used in this article, the following terms shall have the following meanings:

(a) "Bona fide transferor" means a person or public agency as defined in Section 20009 of the Government Code with a contract for sale of water that may be conditioned upon the acquisition of conveyance facility capacity to convey the water that is the subject of the contract.

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(b) “Emergency” means a sudden occurrence such as a storm, flood, fire, or an unexpected equipment outage impairing the ability of a person or public agency to make water deliveries.

(c) “Fair compensation” means the reasonable charges incurred by the owner of the conveyance system, including capital, operation, maintenance, and replacement costs, increased costs from any necessitated purchase of supplemental power, and including reasonable credit for any offsetting benefits for the use of the conveyance system.

(d) “Replacement costs” mean the reasonable portion of costs associated with material acquisition for the correction of irreparable wear or other deterioration of conveyance facility parts that have an anticipated life that is less than the conveyance facility repayment period and which costs are attributable to the proposed use.

(e) “Unused capacity” means space that is available within the operational limits of the conveyance system and that the owner is not using during the period for which the transfer is proposed and which space is sufficient to convey the quantity of water proposed to be transferred.

*(Amended by Stats. 1998, Ch. 485, Sec. 161. Effective January 1, 1999.)*

**§ 1812.** The state, regional, or local public agency owning the water conveyance facility shall in a timely manner determine the following:

(a) The amount and availability of unused capacity.

(b) The terms and conditions, including operation and maintenance requirements and scheduling, quality requirements, term or use, priorities, and fair compensation.

*(Added by Stats. 1986, Ch. 918, Sec. 2.)*

**§ 1813.** In making the determinations required by this article, the respective public agency shall act in a reasonable manner consistent with the requirements of law to facilitate the voluntary sale, lease, or exchange of water and shall support its determinations by written findings. In any judicial action challenging any determination made under this article the court shall consider all relevant evidence, and the court shall give due consideration to the purposes and policies of this article. In any such case the court shall sustain the determination of the public agency if it finds that the determination is supported by substantial evidence.

*(Added by Stats. 1986, Ch. 918, Sec. 2.)*

**§ 1814.** This article shall apply to only 70 percent of the unused capacity.

*(Added by Stats. 1986, Ch. 918, Sec. 2.)*

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**CHAPTER 12. ENFORCEMENT OF WATER RIGHTS [1825. - 1851.]**

*(Chapter 12 added by Stats. 1980, Ch. 933, Sec. 13.)*

**Article 1. Policy [1825. - 1825.]**

*(Article 1 added by Stats. 1980, Ch. 933, Sec. 13.)*

**§ 1825.** It is the intent of the Legislature that the state should take vigorous action to enforce the terms and conditions of permits licenses, certifications, and registrations to appropriate water, to enforce state board orders and decisions, and to prevent the unlawful diversion of water.

*(Amended by Stats. 2002, Ch. 652, Sec. 5. Effective January 1, 2003.)*

**Article 2. Cease and Desist Orders [1831. - 1836.]**

*(Article 2 added by Stats. 1980, Ch. 933, Sec. 13.)*

**§ 1831.** (a) When the board determines that any person is violating, or threatening to violate, any requirement described in subdivision (d), the board may issue an order to that person to cease and desist from that violation.

(b) The cease and desist order shall require that person to comply forthwith or in accordance with a time schedule set by the board.

(c) The board may issue a cease and desist order only after notice and an opportunity for hearing pursuant to Section 1834.

(d) The board may issue a cease and desist order in response to a violation or threatened violation of any of the following:

(1) The prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division.

(2) Any term or condition of a permit, license, certification, or registration issued under this division.

(3) Any decision or order of the board issued under this part, Section 275, Chapter 11 (commencing with Section 10735) of Part 2.74 of Division 6, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

(4) A regulation adopted under Section 1058.5.

(5) Any extraction restriction, limitation, order, or regulation adopted or issued under Chapter 11 (commencing with Section 10735) of Part 2.74 of Division 6.

(e) This article does not authorize the board to regulate in any manner, the diversion or use of water not otherwise subject to regulation of the board under this part.

*(Amended by Stats. 2014, Ch. 347, Sec. 9. Effective January 1, 2015.)*

**§ 1832.** Cease and desist orders of the board shall be effective upon the issuance thereof. The board may, after notice and opportunity for hearing, upon its own motion or upon receipt of an application from an aggrieved person, modify, revoke, or stay in whole or in part any cease and desist order issued pursuant to this chapter.

*(Amended by Stats. 2002, Ch. 652, Sec. 7. Effective January 1, 2003.)*

**§ 1834.** (a) In the event that a violation of a requirement described in subdivision (d) of Section 1831 is occurring or threatening to occur, the board shall give notice by personal notice or certified mail, pursuant to which the party shall be informed that he or she may request a hearing not later than 20 days from the date on which the notice is received, to the person allegedly engaged in the violation. The notice shall contain a statement of facts and information that would tend to show the proscribed action, and notification of the requirements of subdivision (b).

(b) Unless a written request for a hearing signed by or on behalf of the notified party is delivered to or received by mail by the board within 20 days after receipt of the notice, the board may adopt a cease and desist order, based on the statement of facts and information set forth in the notice, without a hearing.

*(Amended by Stats. 2002, Ch. 652, Sec. 9. Effective January 1, 2003.)*

**§ 1835.** As used in this chapter, “person” includes any city, county, district, the state, or any department or agency thereof, and the United States to the extent authorized by law.

*(Added by Stats. 1980, Ch. 933, Sec. 13.)*

**§ 1836.** Nothing in this chapter shall preclude the board from issuing any order or taking any other action authorized pursuant to Sections 275 and 1052.

*(Added by Stats. 1980, Ch. 933, Sec. 13.)*

### **Article 3. Monitoring and Reporting [1840. - 1841.]**

*(Article 3 added by Stats. 2015, Ch. 27, Sec. 15.)*

**§ 1840.** (a) (1) Except as provided in subdivision (b), a person who, on or after January 1, 2016, diverts 10 acre-feet of water per year or more under a permit or license shall install and maintain a device or employ a method capable of measuring the rate of direct diversion, rate of collection to storage, and rate of withdrawal or release from storage. The measurements shall be made using the best available technologies and best professional practices, as defined in Section 5100, using a device or methods satisfactory to the board, as follows:

(A) A device shall be capable of continuous monitoring of the rate and quantity of water diverted and shall be properly maintained. The permittee or licensee shall provide the board with evidence that the device has been installed with the first report submitted after installation of the device. The permittee or

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licensee shall provide the board with evidence demonstrating that the device is functioning properly as part of the reports submitted at five-year intervals after the report documenting installation of the device, or upon request of the board.

(B) In developing regulations pursuant to Section 1841, the board shall consider devices and methods that provide accurate measurement of the total amount diverted and the rate of diversion. The board shall consider devices and methods that provide accurate measurements within an acceptable range of error, including the following:

- (i) Electricity records dedicated to a pump and recent pump test.
- (ii) Staff gage calibrated with an acceptable streamflow rating curve.
- (iii) Staff gage calibrated for a flume or weir.
- (iv) Staff gage calibrated with an acceptable storage capacity curve.
- (v) Pressure transducer and acceptable storage capacity curve.

(2) The permittee or licensee shall maintain a record of all diversion monitoring that includes the date, time, and diversion rate at time intervals of one hour or less, and the total amount of water diverted. These records shall be included with reports submitted under the permit or license, as required under subdivision (c), or upon request of the board.

(b) (1) The board may modify the requirements of subdivision (a) upon finding either of the following:

(A) That strict compliance is infeasible, is unreasonably expensive, would unreasonably affect public trust uses, or would result in the waste or unreasonable use of water.

(B) That the need for monitoring and reporting is adequately addressed by other conditions of the permit or license.

(2) The board may increase the 10-acre-foot reporting threshold of subdivision (a) in a watershed or subwatershed, after considering the diversion reporting threshold in relation to quantity of water within the watershed or subwatershed. The board may increase the 10-acre-foot reporting threshold to 25 acre-feet or above if it finds that the benefits of the additional information within the watershed or subwatershed are substantially outweighed by the cost of installing measuring devices or employing methods for measurement for diversions at the 10-acre-foot threshold.

(c) At least annually, a person who diverts water under a registration, permit, or license shall report to the board the following information:

- (1) The quantity of water diverted by month.
- (2) The maximum rate of diversion by months in the preceding calendar year.

(3) The information required by subdivision (a), if applicable.

(d) Compliance with the applicable requirements of this section is a condition of every registration, permit, or license.

*(Added by Stats. 2015, Ch. 27, Sec. 15. Effective June 24, 2015.)*

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**§ 1841.** (a) The board may adopt regulations requiring measurement and reporting of water diversion and use by either of the following:

(1) Persons authorized to appropriate water under a permit, license, registration for small domestic, small irrigation, or livestock stockpond use, or certification for livestock stockpond use.

(2) Persons required to comply with measurement and reporting regulations pursuant to subparagraph (B) of paragraph (1) of subdivision (e) of Section 5103.

(b) The initial regulations that the board adopts pursuant to this section shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of the initial regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted under this section shall remain in effect until revised by the board.

(c) The adoption of the initial regulations pursuant to this article is exempt from Division 13 (commencing with Section 21000) of the Public Resources Code.

*(Added by Stats. 2015, Ch. 27, Sec. 15. Effective June 24, 2015.)*

#### **Article 4. Enforcement [1845. - 1846.]**

*(Article 4 added by Stats. 1980, Ch. 933, Sec. 13.)*

**§ 1845.** (a) Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.

(b) (1) A person or entity who violates a cease and desist order issued pursuant to this chapter may be liable in an amount not to exceed the following:

(A) If the violation occurs in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions, ten thousand dollars (\$10,000) for each day in which the violation occurs.

(B) If the violation is not described by subparagraph (A), one thousand dollars (\$1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.

(3) Civil liability may be imposed administratively by the board pursuant to Section 1055.

(c) In determining the appropriate amount, the court, or the board, as the case may be, shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(d) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

*(Amended by Stats. 2014, Ch. 3, Sec. 13. Effective March 1, 2014.)*

**§ 1846.** (a) A person or entity may be liable for a violation of any of the following in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs:

(1) A term or condition of a permit, license, certificate, or registration issued under this division.

(2) A regulation or order adopted by the board.

(b) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.

(c) Civil liability may be imposed administratively by the board pursuant to Section 1055.

(d) In determining the appropriate amount of civil liability, the court, pursuant to subdivision (b), or the board, pursuant to subdivision (c), may take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(e) No liability shall be recoverable under this section for any violation for which liability is recovered under Section 1052.

(f) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

*(Amended by Stats. 2015, Ch. 27, Sec. 16. Effective June 24, 2015.)*

## **Article 5. Private Litigation [1850. - 1851.]**

*(Article 5 added by Stats. 1980, Ch. 933, Sec. 13.)*

**§ 1850.** Any factual or legal determinations made pursuant to a cease and desist order shall be conclusive and shall preclude any party to the order from raising those issues in any subsequent administrative proceeding.

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*(Amended by Stats. 2002, Ch. 652, Sec. 11. Effective January 1, 2003.)*

**§ 1851.** Nothing in this chapter shall be construed to limit or abridge the right of any person to bring an action for equitable or legal relief for harm caused by an unauthorized diversion or a violation of a term or condition of a permit or license. No such person shall be required to exhaust any administrative remedy provided by this chapter before bringing such an action.

*(Added by Stats. 1980, Ch. 933, Sec. 13.)*

### **PART 3. DETERMINATION OF WATER RIGHTS [2000. - 2900.]**

*(Part 3 enacted by Stats. 1943, Ch. 368.)*

#### **CHAPTER 1. REFERENCE BY COURTS OF THIS STATE [2000. - 2048.]**

*(Chapter 1 enacted by Stats. 1943, Ch. 368.)*

##### **Article 1. Subjects of Reference [2000. - 2001.]**

*(Article 1 enacted by Stats. 1943, Ch. 368.)*

**§ 2000.** In any suit brought in any court of competent jurisdiction in this State for determination of rights to water, the court may order a reference to the board, as referee, of any or all issues involved in the suit.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2001.** In any suit brought in any court of competent jurisdiction in this State for determination of rights to water, the court may refer the suit to the board for investigation of and report upon any or all of the physical facts involved.

*(Amended by Stats. 1957, Ch. 1932.)*

##### **Article 2. Report of Referee [2010. - 2021.]**

*(Article 2 enacted by Stats. 1943, Ch. 368.)*

**§ 2010.** The board may base its report solely upon its own investigations or in addition thereto may hold hearings and take testimony.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2011.** The report of the board as referee may contain such opinion upon the law and the facts as it deems proper in view of the issues submitted.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2012.** The report shall set forth such findings of fact and conclusions of law as may be required by the court's order of reference.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2013.** Before filing its report the board shall announce it in the form of a draft.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2014.** The board shall mail notice of the draft, together with a copy of the draft, to the parties or their attorneys.

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*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2015.** Within 30 days after the date of the mailing of the draft, or within such further time as the court may for good cause allow, any party may file objections to it with the board.

*(Amended by Stats. 1961, Ch. 132.)*

**§ 2016.** After the objections have been considered by the board or a hearing has been held thereon if deemed advisable by it, the board shall file its report as referee with the clerk of the court and give notice by mail of the filing of its report to the parties or their attorneys.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2017.** The report of the board as referee is subject to review by the court upon exceptions thereto filed with the clerk of the court within 30 days after date of mailing notice of the filing of the report.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2018.** No exception to the report shall be considered, except in the court's discretion or for good cause shown, unless it appears that the matter of the exception was presented to the board in the form of an objection.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2019.** The report filed by the board is prima facie evidence of the physical facts therein found; but the court shall hear such evidence as may be offered by any party to rebut the report or the prima facie evidence.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2020.** (a) At any time after filing of the report by the board as provided in Section 2016 the board, if it appears that underground water is being pumped in an amount which, if not restricted, would destroy or irreparably injure the waters of the basin due to ocean water intrusion before final judgment can be had, may, on notice, pursuant to the provisions of Section 527 of the Code of Civil Procedure, apply to the court for a preliminary injunction, restricting the pumping of water of the basin so as to avoid irreparable injury to, or destruction of, the waters of the basin, and the court may issue the injunction, subject to the provisions of Section 2021, equitably restricting and apportioning the reduction in the pumping of water.

(b) The provisions of this section apply only to actions to determine rights to waters of underground basins located in the arid, southern coastal area defined by the exterior boundaries of the Counties of Santa Barbara, Ventura, Los Angeles, Orange, and San Diego.

*(Amended by Stats. 1982, Ch. 517, Sec. 403.)*

**§ 2021.** Where a preliminary injunction has been granted pursuant to Section 2020, the final judgment shall equitably compensate in quantities of water for

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such variations as there may be between the rights of the parties to the use of water on which such preliminary injunction is based, and as such rights are determined in such final judgment.

*(Added by Stats. 1953, Ch. 1690.)*

### **Article 3. Expenses of Reference [2040. - 2048.]**

*(Article 3 enacted by Stats. 1943, Ch. 368.)*

**§ 2040.** In acting pursuant to this chapter the board shall not be entitled to any fee for its services but shall be paid or reimbursed the total expense incurred by it, including salaries, wages, traveling expenses, and all costs of whatsoever character which are properly chargeable to the reference.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2041.** If the funds available for use by the board are inadequate to permit it to advance the expense of a reference, or if in its opinion the payment of the expense of any reference is not reasonably certain, the board shall refuse to undertake a reference unless and until adequate provision is made by the parties and approved by the court for the payment of the expenses.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2042.** During the pendency of any reference, upon motion of the board and upon a hearing by the court after at least 10 days' notice to the parties, the court may order such interim or partial payments of the expense to be made by the parties as it deems proper and equitable under the circumstances.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2043.** The total expense shall be equitably apportioned by the board against the parties to the suit, and a statement thereof and of the apportionment shall be sent by registered mail by the board to the parties and filed with the court.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2045.** Upon application in writing by any party aggrieved within 30 days after the statement of final expense and its apportionment has been mailed to the parties, the court shall after expiration of that period set a hearing for the determination of any objections to the expense of the reference or to the apportionment thereof. The clerk of the court shall, at least 10 days prior to the date of hearing, give notice thereof by mail to all parties.

*(Amended by Stats. 1955, Ch. 631.)*

**§ 2046.** Any party failing to object to the expense of a reference or the apportionment thereof is conclusively deemed to have waived all objection thereto.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2047.** If no objection is filed with the court within the prescribed period, the court upon ex parte application of the board shall enter a judgment against the parties in favor of the board in the amounts apportioned to them.

*(Amended by Stats. 1963, Ch. 329.)*

**§ 2048.** Upon the hearing of objections to the expense or the apportionment thereof the court shall determine the expense and its apportionment as the court deems equitable and shall enter judgment against the parties in favor of the board in the amounts apportioned to them.

*(Amended by Stats. 1963, Ch. 329.)*

## **CHAPTER 2. REFERENCES IN FEDERAL COURTS [2075. - 2076.]**

*(Chapter 2 enacted by Stats. 1943, Ch. 368.)*

**§ 2075.** In case suit is brought in a federal court for determination of rights to water within, or partially within, this State, the board may accept a reference of such suit as master or referee for the court.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2076.** In acting under this chapter the board shall proceed according to the rules of practice and procedure of the court or as otherwise directed by the court.

*(Amended by Stats. 1957, Ch. 1932.)*

## **CHAPTER 2.5. ADJUDICATIONS TO PROTECT THE QUALITY OF GROUND WATER [2100. - 2102.]**

*(Chapter 2.5 added by Stats. 1969, Ch. 482.)*

**§ 2100.** After the department has submitted to the board recommendations for the protection of the quality of ground water pursuant to Section 12617.1 or 12923.1 of this code, or in reliance upon investigation by any governmental agency, the board may file an action in the superior court to restrict pumping, or to impose physical solutions, or both, to the extent necessary to prevent destruction of or irreparable injury to the quality of such water. In such action, all of the claimants to the use of the affected water known to the board, except claimants to the use of minor quantities of water as defined in Section 2102, shall be named as defendants. In any watershed or ground water basin wherein (a) all or substantially all of the rights to water have been adjudicated and the court has retained continuing jurisdiction arising from the adjudication, or (b) wherein such action is pending, any such proceedings by the board shall be undertaken only by intervention by the board in such existing action.

*(Added by Stats. 1969, Ch. 482.)*

**§ 2101.** (a) Before filing or intervening in any such action the board shall hold a public hearing on the necessity for restricting ground water pumping or for a physical solution in order to protect the quality of water from destruction or

irreparable injury. The board shall serve notice of such hearing as provided in Section 6066 of the Government Code and shall mail a copy of such notice to each producer of ground water within the area proposed for investigation, to the extent that such producers of ground water are known to the board, at least 15 days prior to the date of such hearing, except that notice need not be mailed to producers of minor quantities of water as defined in Section 2102.

(b) In the event the board decides that the rights to the use of the ground water must be adjudicated in order to require the restriction of pumping or physical solution necessary to preserve it from destruction or irreparable injury to quality, the board shall first determine whether any local public agency overlying all or a part of the ground water basin will undertake such adjudication of water rights. If such local agency commences an adjudication, the board shall take no further action, except that the board may, through the Attorney General, become a party to such action.

(c) In the event no local agency commences such action within 90 days after notice of the decision of the board, the board shall file such action. *(Added by Stats. 1969, Ch. 482.)*

**§ 2102.** As used in this article, “minor quantities of water” refers to the extraction by any person of not to exceed 10 acre-feet of ground water annually.

*(Added by Stats. 1969, Ch. 482.)*

### **CHAPTER 3. STATUTORY ADJUDICATIONS [2500. - 2868.]**

*(Chapter 3 enacted by Stats. 1943, Ch. 368.)*

#### **Article 1. General Provisions [2500. - 2503.]**

*(Article 1 enacted by Stats. 1943, Ch. 368.)*

**§ 2500.** As used in this chapter, “stream system” includes stream, lake, or other body of water, and tributaries and contributory sources, but does not include an underground water supply other than a subterranean stream flowing through known and definite channels.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2500.5.** (a) As used in this chapter with respect to the Scott River in Siskiyou County, “stream system” includes ground water supplies which are interconnected with the Scott River, but does not include any other underground water supply.

(b) The Legislature finds and declares that by reason of the geology and hydrology of the Scott River, it is necessary to include interconnected ground waters in any determination of the rights to the water of the Scott River as a foundation for a fair and effective judgment of such rights, and that it is necessary that the provisions of this section apply to the Scott River only.

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(c) If this section is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter, or of any proceedings thereunder, but shall affect only the validity of the proceedings with respect to such interconnected ground water supplies.  
*(Added by Stats. 1971, Ch. 794.)*

**§ 2501.** The board may determine, in the proceedings provided for in this chapter, all rights to water of a stream system whether based upon appropriation, riparian right, or other basis of right.  
*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2502.** If the board finds that the use by any persons under claim of right of only minor quantities of water, as defined in Section 2503, would have no material effect on the rights of other claimants, the board may exempt such persons from being subject to these proceedings as claimants or parties with respect to such minor quantities of water; provided, that any person so exempted may elect to continue to be subject to these proceedings by giving prompt notice to the board.  
*(Added by Stats. 1971, Ch. 794.)*

**§ 2503.** As used in this chapter, “minor quantities of water” refers to the diversion or extraction by any person of not to exceed 10 acre-feet of water annually.  
*(Added by Stats. 1971, Ch. 794.)*

## **Article 2. Petition and Preliminary Proceedings [2525. - 2529.]**

*(Article 2 enacted by Stats. 1943, Ch. 368.)*

**§ 2525.** Upon petition signed by one or more claimants to water of any stream system, requesting the determination of the rights of the various claimants to the water of that stream system, the board shall, if, upon investigation, it finds the facts and conditions are such that the public interest and necessity will be served by a determination of the water rights involved, enter an order granting the petition and make proper arrangements to proceed with the determination.  
*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2526.** As soon as practicable after granting the petition the board shall prepare and issue a notice setting forth the following:

- (a) The facts of the entry of the order and of the pendency of the proceedings;
- (b) That all claimants to rights to the use of water of the stream system are required to inform the board within 60 days from the date of the notice, or such further time as the board may allow, of their intention to file proof of claim;
- (c) The date prior to which all claimants to rights to the water of the stream system shall notify the board in writing of their intention to file proof of

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claim and the address to which all subsequent notices to the claimant relating to the proceedings may be sent;

(d) A statement that all claimants will be required to make proof of their claims at a time to be fixed by the board after the conclusion of its investigation. *(Amended by Stats. 1976, Ch. 545.)*

**§ 2527.** The notice shall be published at least once a week for four consecutive weeks, commencing within 20 days of the date of issuance of the notice, in one or more newspapers of general circulation published in each county in which any part of the stream system is situated, and, within the same 20-day period, the notice shall be mailed to all persons known to the board who own land that appears to be riparian to the stream system or who divert water from the stream system.

*(Amended by Stats. 1976, Ch. 545.)*

**§ 2528.** Whenever proceedings are instituted for the determination of rights to water, it is the duty of all claimants interested therein and having notice thereof as provided in this chapter, to notify the board of their intention to file proof of claim and to appear and submit proof of their respective claims at the time and in the manner required by this chapter.

*(Amended by Stats. 1965, Ch. 53.)*

**§ 2529.** (a) Within 60 days after the date by which claimants to rights to the water of the stream system are required to notify the board in writing of their intention to file proof of claim, the board shall prepare and file for record, in the office of the county recorder of each county in which any part of the stream system is situated, a notice setting forth all of the following facts:

(1) The order has been entered and the proceedings are pending.

(2) Information regarding the status of the proceedings may be obtained from the board.

(3) The proceedings will result in a determination of the rights to water of the stream system.

(4) Any claimant who fails to appear and submit proof of his or her claim as provided in this chapter shall be held to have forfeited all rights to water previously claimed by him or her on the stream system, other than as provided in the decree, unless entitled to relief under the laws of this state.

(5) At the conclusion of the proceedings, the superior court will enter a decree determining the water rights appurtenant to each parcel identified in the notice, including the specific parcel against which this notice appears, and the decree may accord the claimant for that parcel water rights which are different from those he or she has claimed.

(b) The notice shall identify the current owners of each parcel that appears to be riparian to the stream system or to which water is diverted from the

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stream, and shall be recorded in a manner so that anyone researching the title of a parcel will find the notice.

(c) If the board subsequently identifies an additional parcel or parcels which appear to be riparian to the stream system or to which water is diverted from the stream, the board shall prepare and file for record a supplementary notice identifying the current owners of the additional parcels. The supplementary notice shall be recorded in the same manner as the original notice.

*(Added by Stats. 1984, Ch. 1654, Sec. 1.)*

### **Article 3. Investigation of Stream System [2550. - 2555.]**

*(Article 3 repealed and added by Stats. 1976, Ch. 545.)*

**§ 2550.** As soon as practicable after granting the petition, the board shall begin an investigation of the stream system, of the diversion of water, of all beneficial uses being made of the water, and of the water supply available for those uses, and shall gather such other data and information as may be essential to the proper determination of the water rights in the stream system.

*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2551.** During the investigation the representatives of the board shall, after 30 days' notice in writing to each person who has given notice of intent to file proof of claim, conduct a detailed field investigation of such person's use of water, and shall determine the acreage under irrigation or otherwise define the place of use and purpose of use, determine the location and capacity of such person's diversion works and conduits conveying water from the stream system, and the amount of water diverted and reasonably required to satisfy the uses being made. It shall be the duty of each claimant to be present at some time during the detailed field investigation either in person or by an agent who is authorized to sign the proof of claim.

*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2552.** Each claimant shall have available at the detailed field investigation all pertinent information on the extent and nature of the claimant's water use and basis of water right, so as to expedite the investigation and facilitate the completion of the proof of claim.

*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2553.** Immediately upon conclusion of the detailed field investigation, the claimant or the claimant's representative shall be provided, by registered mail, a blank form of proof of claim and a copy of the factual determinations of the representatives of the board for use in preparing the proof of claim.

*(Repealed and added by Stats. 1976, Ch. 545.)*

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**§ 2554.** During the investigation of the stream system, the board shall also conduct detailed field investigations of projects of all water users known to the board who have not filed a notice of intent to file proof of claim. Such investigations shall be in accordance with Section 2551, except that the water users need not be notified in advance of the investigation.

*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2555.** Water users not present during conduct of the detailed field investigation and those not filing notice of intent shall, insofar as they are known, be supplied a copy of the factual determinations of the representative of the board and a blank form of proof of claim and shall be allowed to file proof of claim after completion of the detailed investigation of their project by the representatives of the board on the same basis as persons who were present and who filed timely notices of intent.

*(Added by Stats. 1976, Ch. 545.)*

#### **Article 4. Proof of Claim [2575. - 2577.]**

*(Article 4 repealed and added by Stats. 1976, Ch. 545.)*

**§ 2575.** The proof of claim shall be filed with the board on the form provided by the board and shall include all of the following:

(a) The name and post office address of the claimant.

(b) The nature of the right on which the claim is based, the date upon which it was initiated, and the purpose of use.

(c) A description of any works of diversion or distribution and the date such works were constructed.

(d) The character of the soil and the location, area, and kind of crops irrigated, if any; the season of use; and the amount of water required and diverted.

(e) The number of people served water, if any.

(f) Such other facts as the board requires to show the extent and nature of the right and compliance with the law in acquiring it.

*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2576.** Each claimant shall certify to the proof of claim statements under oath or penalty of perjury.

*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2577.** Any person not submitting a proof of claim to the board or to representatives of the board by the conclusion of the investigation shall be notified in writing that such person's rights will be entered in the preliminary order of determination by the board based on the measurements and information gathered during the investigation unless a claim is submitted within 30 days of such notification.

*(Added by Stats. 1976, Ch. 545.)*

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## **Article 5. Report and Preliminary Order of Determination [2600. - 2604.]**

*(Article 5 repealed and added by Stats. 1976, Ch. 545.)*

**§ 2600.** After all field investigations have been completed and the time for filing proofs of claims has expired, the board shall prepare a report describing the water supply and abstracting the claim of water right of each claimant.  
*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2601.** The report shall note separately any material differences between the claims and the factual determinations made by the representatives of the board during the investigation.  
*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2602.** The report shall include a map showing the stream system, diversion points, conduits, areas of water use and the type of use, owner's names, and such other information as the board deems necessary.  
*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2603.** The report shall include a preliminary order of determination determining and establishing the several rights to the water of the stream system, giving appropriate consideration to claims at variance with the measurements and determinations of the representatives of the board.  
*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2604.** A copy of the report shall be sent by registered mail to each claimant and to each person not filing a claim appearing in the report as a water user. It shall be accompanied by a notice setting a day at least 60 days thereafter, prior to which such persons may file objections to any portion of the report, including the preliminary order of determination.  
*(Repealed and added by Stats. 1976, Ch. 545.)*

## **Article 6. Objections to the Report [2625. - 2628.]**

*(Article 6 repealed and added by Stats. 1976, Ch. 545.)*

**§ 2625.** The notice shall also set a time and place reasonably convenient to the claimants when and where the proofs of claim and measurements and other data collected by the board during the proceedings will be open and available for inspection by all interested persons. The period of inspection shall be fixed by the board but shall be not less than five days.  
*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2626.** A representative of the board shall be present at the time and place designated in the notice, and shall permit, during the period of inspection, any person interested to inspect such evidence and proofs of claim as have been filed.

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*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2627.** The period of inspection shall be concluded at least 30 days prior to the expiration of the time allowed claimants for filing objections to the report and preliminary order of determination.

*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2628.** The objections shall be in writing and shall state with reasonable certainty the grounds of the objection.

*(Repealed and added by Stats. 1976, Ch. 545.)*

### **Article 7. Hearing of Objections [2650. - 2653.]**

*(Article 7 repealed and added by Stats. 1976, Ch. 545.)*

**§ 2650.** Within 10 days after the close of the period for filing objections, the board shall mail copies of the objections to the claimant or water user against whom the objections are directed and shall notify by registered mail the persons whose rights are significantly affected to appear before it at a time and place specified and at such time and place the objections will be heard. The time specified shall be as soon as practicable but not less than 15 days from the date of the mailing of the notice of hearing.

*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2651.** The board may adjourn hearings of objections from time to time upon reasonable notice to all parties in interest.

*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2652.** The costs of taking testimony at a hearing on an objection shall be borne by the parties thereto as follows: each party shall pay for the direct examination of his own witness and the cross-examination of opponent's witness, and the parties shall share equally for that part of the examination directed by the representative of the board.

*(Repealed and added by Stats. 1976, Ch. 545.)*

**§ 2653.** One copy of the transcript of testimony taken at the hearing shall be furnished to the board at the cost of the parties.

*(Repealed and added by Stats. 1976, Ch. 545.)*

### **Article 8. Order of Determination [2700. - 2702.]**

*(Article 8 enacted by Stats. 1943, Ch. 368.)*

**§ 2700.** As soon as practicable after the hearing of objections or the expiration of the time for filing objections if no objections are filed, the board shall adopt an order determining and establishing the several rights to the water of the stream system.

*(Amended by Stats. 1984, Ch. 1654, Sec. 2.)*

**§ 2701.** A notice of adoption of the order of determination and a copy of the order shall be sent by registered mail to each claimant and to each person whose rights are determined in the order.

*(Amended by Stats. 1984, Ch. 1654, Sec. 3.)*

**§ 2702.** (a) The board may order a reconsideration of all or part of an order of determination on the board's own motion or on petition of any party affected by the order. The petition shall be filed within 30 days after the notice required by Section 2701 is sent. The authority of the board to order a reconsideration on its own motion shall expire 30 days after the board has adopted the order. The board shall order or deny reconsideration on a petition for reconsideration within 90 days after the notice required by Section 2701 is sent.

(b) The order of determination may be reconsidered by the board on all the pertinent parts of the record and any arguments as may be permitted, or a further hearing may be held, upon notice to all affected parties, for the purpose of receiving additional evidence that the board may, for cause, allow. The order on reconsideration has the same force and effect as an original order.

*(Amended by Stats. 1990, Ch. 230, Sec. 2.)*

### **Article 9. Hearing and Decree of Court [2750. - 2774.]**

*(Heading of Article 9 renumbered from Article 10 by Stats. 1965, Ch. 53.)*

**§ 2750.** As soon as practicable after adoption of the order of determination, issuance of an order on reconsideration, or issuance of an order denying reconsideration, whichever is later, a certified copy of the order, together with the original evidence and transcript of testimony filed with or taken before the board and certified by it, shall be filed with the clerk of the superior court of the county in which the stream system, or some part thereof, is situated.

*(Amended by Stats. 1984, Ch. 1654, Sec. 6.)*

**§ 2751.** Upon the filing of the certified copy of the order of determination and the evidence and transcript, the board shall procure an order from the court setting a time for hearing.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2752.** The clerk of the court shall immediately furnish the board with a certified copy of the order setting the time for hearing.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2753.** Upon receiving the certified copy of the order setting the time for hearing, the board shall immediately mail a copy of the order by registered mail to each known party in interest at his last known place of residence.

*(Amended by Stats. 1957, Ch. 1932.)*

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**§ 2754.** The board shall cause the order to be published at least once a week for four consecutive weeks in some newspaper of general circulation published in each county in which the stream system or any part thereof is situated.  
*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2755.** The board shall file with the clerk of the court proof of service by registered mail and by publication.  
*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2756.** Service by registered mail and by publication shall be deemed full and sufficient notice to all parties in interest of the date and purpose of the hearing.  
*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2757.** At least 10 days prior to the day set for hearing, each party in interest who is aggrieved or dissatisfied with the order of determination may file with the clerk of the court notice of exceptions to the order of determination.  
*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2758.** The notice of exceptions shall state briefly the exceptions taken, the reasons therefor, and the prayer for relief.  
*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2759.** A copy of each notice of exception shall be sent by registered mail at least 10 days prior to the hearing to the board and to each person who was an adverse party to any issue raised by the exception at a hearing of the board.  
*(Amended by Stats. 1976, Ch. 545.)*

**§ 2760.** The order of determination, the statements or claims of claimants, and the exceptions made to the order of determination constitute the pleadings.  
*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2761.** The court may allow such additional or amended pleadings as may be necessary to a final determination of the proceeding.  
*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2762.** If no exceptions are filed, then on the day set for the hearing, on motion of the board, the court shall enter a decree affirming the order of determination.  
*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2763.** On the day set for hearing all parties in interest who have filed notices of exceptions shall appear in person, or by counsel, and the court shall hear the matter or set the time for hearing, and shall continue the hearing until all exceptions are disposed of.  
*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2763.5.** (a) No exception to the order of determination shall be considered, except in the court's discretion for good cause shown, unless the

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matter of the exception was presented to the board in the form of an objection. Good cause includes, but is not limited to, the existence of newly discovered relevant evidence which, in the exercise of reasonable diligence, could not have been presented to the board during the board's proceedings.

(b) This section does not apply to persons to whom the board did not mail either (1) written notice of the board meeting at which the petition pursuant to Section 2525 is to be considered as an item of business, or (2) written notice of the pendency of the proceedings pursuant to Section 2526.

*(Added by Stats. 1985, Ch. 572, Sec. 1.)*

**§ 2764.** All proceedings on the hearing shall be as nearly as may be in accordance with the rules governing civil actions.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2765.** Whenever in the judgment of the court the State is a necessary party to the action, the court shall make an order to that effect and thereupon a copy of all pleadings and proceedings on file with the court in the action shall be served upon the Attorney General who shall represent the State therein.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2766.** For further information on any subject in controversy the court may employ one or more qualified persons to investigate and report thereon under oath, subject to examination by any party in interest as to his competency to give expert testimony on the subject.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2767.** The court may take additional evidence on any issue and may, if necessary, refer the case for such further evidence to be taken by the board as the court may direct, and may require a further determination by the board.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2768.** After the hearing, the court shall enter a decree determining the right of all persons involved in the proceeding.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2769.** The decree shall in every case declare as to the water right adjudged to each party, the priority, amount, season of use, purpose of use, point of diversion, and place of use of the water; and as to water used for irrigation, the decree shall also declare the specific tracts of land to which it is appurtenant, together with such other factors as may be necessary to define the right.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2770.** Upon the hearing the court may assess and adjudge against any party such costs as it may deem just.

*(Enacted by Stats. 1943, Ch. 368.)*

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**§ 2771.** Appeals from the decree may be taken by the board or any party in interest, in the same manner and with the same effect as in civil cases.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2772.** A certified copy of the decree shall be prepared by the clerk of the court, without charge, and filed for record in the office of the county recorder of each county in which any part of the stream system is situated and also in the office of the board.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2773.** The decree is conclusive as to the rights of all existing claimants upon the stream system lawfully embraced in the determination.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2774.** When a decree has been entered, any claimant who has failed to appear and submit proof of his claim as provided in this chapter shall be barred and estopped from subsequently asserting any rights theretofore acquired upon the stream system embraced in the proceedings, and shall be held to have forfeited all rights to water theretofore claimed by him on the stream system, other than as provided in the decree, unless entitled to relief under the laws of this State.

*(Enacted by Stats. 1943, Ch. 368.)*

### **Article 10. Intervention [2780. - 2783.]**

*(Article 10 added by Stats. 1965, Ch. 53.)*

**§ 2780.** Any claimant who, prior to entry of the order of determination by the board, had no actual knowledge or notice of the pendency of the proceedings may, at least 10 days prior to the date set for hearing by the court or within such further time prior to the decree as the court may allow, intervene in the proceedings by filing with the court an exception to the order of determination and a proof of claim which shall contain all the matters required by this chapter of claimants who have been served with notice of the proceeding.

*(Added by Stats. 1965, Ch. 53.)*

**§ 2781.** Upon filing his exception and proof of claim, the intervenor shall make application to the court for an order prescribing the time and manner of service of the exception and proof upon other claimants and the time within which contests of the proof may be filed with the court and served upon the intervenor.

*(Added by Stats. 1965, Ch. 53.)*

**§ 2782.** After expiration of the time fixed by the court for filing contests, the court shall proceed to hear and determine the exception and proof of intervenor and any contest thereto in accordance as near as may be with Article 9 (commencing with Section 2750).

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*(Amended by Stats. 1983, Ch. 142, Sec. 176.)*

**§ 2783.** The court may refer the matter for such further evidence to be taken by the board as the court may direct, and may require a further determination by the board, in which event the board shall be entitled to reimbursement for expenses incurred by it in the manner provided in Article 13 (commencing with Section 2850) of this chapter.

*(Added by Stats. 1965, Ch. 53.)*

**Article 11. Proceedings when Appropriation Incomplete at Time of Determination [2801. - 2820.]**

*(Article 11 enacted by Stats. 1943, Ch. 368.)*

**§ 2801.** All persons claiming rights under an incomplete appropriation, when notified as provided in this chapter, shall appear and submit their proofs of claim in accordance with this chapter, or they shall be deemed and held to be in default and to have abandoned or to have no right, title, or interest in or to the water of the stream system, other than as the person may be found to be entitled by the board based on available information and data.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2802.** In determining rights based on an incomplete appropriation initiated according to law prior to December 19, 1914, and since prosecuted with reasonable diligence in accordance with Section 1416 of the Civil Code, the board shall prescribe such reasonable time for the completion of the appropriation and the application of the water to a beneficial use as will enable the claimant acting in good faith and with due diligence to complete the appropriation.

*(Amended by Stats. 1965, Ch. 53.)*

**§ 2803.** The order of determination shall provide that within the time prescribed for completion of the appropriation, or such further time as the court may allow, the claimant shall submit to the court proof of completion and the amount of water actually applied to beneficial use.

*(Amended by Stats. 1965, Ch. 53.)*

**§ 2806.** The court shall have authority to thereafter hear and determine proof offered as to the completion of any such right.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2807.** Time for completion may be extended from time to time by the court upon motion made prior to the expiration of the limit of time fixed therefor.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2808.** Notice of motion for an extension of time for completion shall be filed not more than 90 days prior to the expiration of the time limit.

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*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2809.** The clerk of the court shall post notice of hearing of the motion at the courthouse where the hearing is to be held and at least 10 days prior to the hearing.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2810.** The court may refer the matter of the motion to the board for its report and recommendation thereon.

*(Amended by Stats. 1965, Ch. 53.)*

**§ 2811.** Upon receipt of the report and recommendation of the board or, if the board fails to file its report and recommendations within 90 days after the reference, upon the expiration of that period, the court shall grant such an extension of time as there is, in its discretion, good and sufficient cause for, or shall deny the motion.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2812.** In event of denial of a motion for the extension of time for completion the applicant may within 10 days after notice by the clerk of the denial, file notice of intention to offer proof of completion.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2813.** Any claimant desiring to offer proof of completion shall file a notice of intention to offer such proof with the clerk of the court.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2814.** The clerk shall post notice of the time for hearing the proof at the courthouse where the hearing is to be held and at least 10 days prior to the hearing.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2815.** Upon submission of proof of completion after entry of the decree of the court, the court shall enter a supplemental decree determining the right before it and in event of failure, after entry of the decree of the court, to submit proof within the time allowed or to move for and secure an extension of time to do so the court shall enter a supplemental decree denying the right involved.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2816.** All persons claiming rights under incomplete appropriations who fail to complete their appropriations within the limit of time fixed by the board in its order of determination, or within such further time granted upon motion made prior to the expiration of the time limit as the court finds equitable and just, shall be deemed to have abandoned their rights of appropriation insofar as the same remain incomplete, and such appropriators shall be deemed and held to

have no right, title or interest in or to the water of the stream system insofar as their appropriations have not been completed.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2817.** Appeals from any action of the court under this article may be taken by the board or any party in interest in the same manner and with the same effect as in the civil cases.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2818.** This article shall not be construed to confer any rights of appropriation upon parties who shall have abandoned their appropriations or failed to use due diligence in the application of the water to a beneficial use and in the completion of their appropriations.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2819.** Incomplete appropriations initiated by application under the provisions of the Water Commission Act or this code shall be included in the decree but shall continue to be administered by the board as in other cases. Upon issuance of a license by the board and completion of court review of the board's action under Article 3 (commencing with Section 1126) of Chapter 4 of Part 1, if court review is sought, and upon motion of the licensee or the board, the court shall enter a supplemental decree confirming the right in accordance with the license. Any change authorized by the board pursuant to Chapter 10 (commencing with Section 1700), Part 2, of this division, shall in like manner be the subject of a supplemental decree.

*(Amended by Stats. 1996, Ch. 659, Sec. 18. Effective January 1, 1997.)*

**§ 2820.** After revocation by the board of a permit or license relating to a right included in the decree and upon completion of court review of the board's action under Article 3 (commencing with Section 1126) of Chapter 4 of Part 1, if court review is sought, the court shall, upon motion of the board or any interested party, enter a supplemental decree denying the right involved.

*(Amended by Stats. 1996, Ch. 659, Sec. 19. Effective January 1, 1997.)*

## **Article 12. Service of Copy of Decree [2825. - 2826.]**

*(Article 12 enacted by Stats. 1943, Ch. 368.)*

**§ 2825.** The board shall furnish to each claimant whose rights are decreed a copy of the decree and a notice of the entry thereof.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2826.** Upon entry of a supplemental decree establishing or modifying a right, the board shall furnish to each claimant who could be significantly affected, at his last known address, a copy of the supplemental decree and a notice of entry thereof.

*(Amended by Stats. 1976, Ch. 545.)*

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**Article 13. Expenses of Determination [2850. - 2868.]**

*(Article 13 enacted by Stats. 1943, Ch. 368.)*

**§ 2850.** At the time of the submission of proofs, the board shall collect from each claimant the fee established pursuant to Section 1528.

*(Amended by Stats. 2003, Ch. 741, Sec. 87. Effective January 1, 2004.)*

**§ 2851.** At the time of, or as soon as practicable after the mailing of, its order of determination the board shall compute the entire expense it has incurred in performing the duties prescribed in this chapter, including salaries, wages, traveling expenses, and all costs of whatever character which are properly chargeable to the proceeding.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2852.** If the total amount of expense exceeds the total amount received from claimants at the time of submission of proofs, the excess expense shall be equitably apportioned by the board against the parties to the proceeding.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2853.** A statement setting forth the expense and the apportionments thereof against the respective parties shall be sent by registered mail by the board to each of the parties and filed with the court.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2855.** Upon application in writing by any party aggrieved within 30 days after the statement of expense and the apportionment thereof has been mailed to the parties, the court shall after expiration of said period set for hearing the determination of any objections to the expense or to the apportionments thereof.

*(Amended by Stats. 1955, Ch. 629.)*

**§ 2856.** The clerk of the court shall, at least 10 days prior to the date of hearing, give notice thereof by mail to all parties.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2857.** If no objection is filed with the court within the prescribed periods the court upon ex parte application of the board shall enter a judgment against the parties in favor of the board in the amounts apportioned to them.

*(Amended by Stats. 1963, Ch. 329.)*

**§ 2858.** Any party failing to object to the expense or the apportionments thereof waives all objections thereto.

*(Enacted by Stats. 1943, Ch. 368.)*

**§ 2859.** Upon the hearing of objections to the expense or the apportionments thereof the court shall determine the expense and its apportionment as the

court deems equitable and shall enter judgment against the parties in favor of the board in the amounts apportioned to them.

*(Amended by Stats. 1963, Ch. 329.)*

**§ 2864.** If the funds available for use by the board are inadequate to enable it to undertake the expense of any proceeding under this chapter or if in its judgment reimbursement for the expense of any such proceeding is not reasonably certain, it may refuse to proceed with its investigation and to undertake the proceeding, unless and until such provision is made by persons interested as may be satisfactory to the board and deemed by it sufficient to secure reimbursement or payment to it for its expenses.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 2865.** During the pendency of any proceedings under this chapter, the board, after at least 20 days' notice to the parties, may order interim or partial payments of the expense to be made by the parties as the board deems proper and equitable under the circumstances.

*(Added by Stats. 2003, Ch. 741, Sec. 88. Effective January 1, 2004.)*

**§ 2868.** If a party fails to pay the expenses apportioned to that party when due, the board may refer the matter for collection of the unpaid expenses pursuant to Section 1536.

*(Added by Stats. 2003, Ch. 741, Sec. 89. Effective January 1, 2004.)*

#### **CHAPTER 4. MODIFICATION OF DECREES [2900. - 2900.]**

*(Chapter 4 enacted by Stats. 1943, Ch. 368.)*

**§ 2900.** In rendering its decree for the determination of rights to water, whether in suits referred to the board under the provisions of Chapter 1 of this part or in adjudications under the provisions of Chapter 3 of this part, the court may provide that the board or any party affected by the decree may, at any time within three years from entry thereof, apply to the court for a modification of the decree insofar only as the decree determines quantities of water, and after hearing the motion and any competent and admissible evidence offered in support of or against the motion the court may modify the decree by increasing or decreasing the quantities of water therein allowed.

*(Amended by Stats. 1957, Ch. 1932.)*

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#### **PART 5. RECORDATION OF WATER EXTRACTATIONS AND DIVERSIONS [4999. - 5009.]**

*(Part 5 added by Stats. 1955, Ch. 1869.)*

**§ 4999.** The Legislature finds and declares that by reason of the combination of light rainfall, concentrated population, the transition of considerable areas of

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land from agricultural use to urban use, and a similar dependence on ground water supplies which prevails in the Counties of Riverside, San Bernardino, Los Angeles, and Ventura, together with the fact that most such underground water supplies are overdrawn, it is necessary that the provisions of this part apply to said counties only.

*(Amended by Stats. 1959, Ch. 526.)*

**§ 5000.** As used in this Part 5, the following terms shall have the respective meanings stated below, viz:

(a) "Ground water" means water beneath the surface of the ground whether or not flowing through known and definite channels.

(b) "Surface water" means water on the surface of the ground.

(c) "Four counties" means the Counties of Riverside, San Bernardino, Los Angeles, and Ventura.

(d) "Person" means all persons whether natural or artificial, including the United States of America, the State of California, and all political subdivisions, districts, municipalities and public agencies of or in either the State or the United States.

(e) "Sources" means any point of diversion or extraction of water and includes among other things wells, tunnels, and headworks.

*(Amended by Stats. 1959, Ch. 526.)*

**§ 5001.** Each person who, after 1955, extracts ground water in excess of 25 acre-feet in any year shall file with the board on or before March 1st of the succeeding year a "Notice of Extraction and Diversion of Water" (hereinafter called "notice") in the form provided in Section 5002; provided, however, that no notice need be filed with respect to, and there shall not be required to be included in any such notice, (a) information concerning the extraction or diversion of water from a source from which less than 10 acre-feet has been taken during such year, (b) information concerning a taking or diversion of surface water for the purpose of generating electrical energy and other nonconsumptive uses, and for incidental uses in connection therewith, or (c) information concerning extractions or diversions of water which are included in annual reports filed with a court or the board by a watermaster appointed by a court or pursuant to statute to administer a final judgment determining rights to water, which reports identify the persons who have extracted or diverted water and give the general place of use and the quantity of water which has been extracted or diverted from each source.

*(Amended by Stats. 1967, Ch. 62.)*

**§ 5002.** Each notice shall be on a form provided by the board. The first notice filed by any person shall state:

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(a) The name of the person extracting ground water or diverting surface water.

(b) The quantity of water taken and the method of measurement used by such person or his predecessor in interest in each preceding year from each surface or ground water source; provided, that if the period of such taking exceeds 10 years, such person is not required to state such quantities for any period greater than the preceding 10 calendar years.

(c) The location (sufficient for identification) of each surface or ground water source through or by means of which water has been taken, and if any person or persons other than the person filing said notice claims any interest in such source or the right to extract water therefrom, the name or names, so far as known, of such other person or persons.

(d) A general description of the area in which such water has been used.

(e) Any other facts which the board may require by general regulation and which tend to prove the facts required by this section to be stated, the origin of water supplying any ground water source mentioned in the notice, water levels in any such source, or the extent of any ground water basin from which such water is withdrawn.

(f) Any person diverting only surface water and not more than 25 acre-feet of ground water in any year need not file such notice for such year.

Notices, other than the first notice filed, shall state, in addition to the name of the person extracting or diverting such water:

First: The quantity of water taken from each surface and ground water source from which such person received any water in the preceding calendar year.

Second: Location of each such surface and ground water source through or by means of which water has been taken in such preceding year. This may be stated, so far as applicable, by reference to the water sources described in the original notice.

Third: If such person diverts surface water in excess of three miner's inches, such person shall further state in said notice the period or periods of such diversion, and the maximum and minimum flows so diverted in each period.

Fourth: Any other facts which the board may require by general regulation, and which tend to prove facts required by this subdivision to be stated, the origin of water supplying any surface or ground water source mentioned in the notice, water levels or flow in any such source, or the extent or origin of the water source supplying the ground water supply from which such water is extracted.

*(Amended by Stats. 1957, Ch. 1932.)*

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**§ 5003.** No prescriptive right that might otherwise accrue to extract ground water shall arise or accrue to, nor shall any statute of limitations operate in regard to the ground water in the four counties after the year 1956 in favor of any person required to file a notice of extraction and diversion of water, until that person files with the board the first “Notice of Extraction and Diversion of Water” substantially in the form mentioned in Section 5002. As to each person who fails to file that notice by the end of the year in 1957, it shall be deemed for the period from that time until the first notice of the person is filed, that no claim of right to the extraction of ground water from any source in the four counties has been made by the person, and that water extracted by the person from the ground water source during that period has not been devoted to or used for any beneficial use. The beneficial use of water from any ground water source within the four counties in any year by the person shall be deemed not to exceed the quantity reported in the notice filed for that year.

*(Amended by Stats. 2006, Ch. 538, Sec. 669. Effective January 1, 2007.)*

**§ 5004.** After the year 1959, failure to file with the board a notice for any calendar year within six months after the close of such calendar year shall be deemed equivalent for all purposes to nonuse for such year of any ground water within the four counties by each person failing to so file a notice within said period; provided, that this section and Section 5003 shall not apply to any person whose aggregate extractions of ground water in any year does not exceed 25 acre-feet nor to any extractions of ground water with respect to which no notice is required to be filed under this part.

*(Amended by Stats. 1959, Ch. 526.)*

**§ 5005.** Except as specified in Section 5004, failure to file the notice or delay in filing the same shall not cause the loss of rights to ground water which existed on January 1, 1956.

*(Added by Stats. 1955, Ch. 1869.)*

**§ 5006.** Each notice shall be sworn to and shall be accompanied by a filing fee which shall be fixed by the board pursuant to Section 1529.

*(Amended by Stats. 2003, Ch. 741, Sec. 90. Effective January 1, 2004.)*

**§ 5007.** Any person may apply to the board to investigate the facts stated in any specified notice so filed and to state in writing its determination of the facts found by it upon such investigation. The cost of such investigation and determination shall be paid by such applicant by such deposits or in such payments as may be fixed by the board. In the event the board makes a determination which differs in any material respect from the facts contained in the notice, then, prior to making its final determination, the board shall notify both the person filing said notice and the person requesting a determination of facts of its proposed findings, and shall invite either party to submit further

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information prior to making its final determination, and no such final determination shall be made until sixty (60) days after the parties have been so notified of the board's proposed determination.

In any action or proceeding hereafter pending in which the facts, or any of them, contained in the notices so filed are material, such notices shall not be evidence of any fact stated therein, but such determination by the board shall be prima facie evidence of said facts.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 5008.** The making of any willful misstatement in any notice shall be a misdemeanor, punishable by a fine of not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail for not to exceed six months, or both.

*(Amended by Stats. 1983, Ch. 1092, Sec. 408. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)*

**§ 5009.** (a) (1) Notwithstanding any other provision of this part, on and after January 1, 2005, each person who extracts groundwater in a board-designated local area, and who is otherwise subject to this part, shall file the required notice with the appropriate local agency designated pursuant to subdivision (e), instead of the board, in accordance with this part. The notice shall be on a form provided by the local agency and the content of the form shall be determined by the local agency in accordance with Section 5002. To the extent possible, the form shall consolidate the notice required under this section with other reports required by the local agency relating to the extraction of groundwater.

(2) A person who is subject to this section is subject to this part in the same manner and to the same extent as a person who files his or her notice with the board.

(b) Each notice filed with the local agency may include a filing fee determined by the local agency. If the local agency chooses to impose a filing fee, the local agency shall calculate the amount of the fee to pay for administrative expenses incurred in connection with the processing, compiling, and retaining of the notices, but in no event shall the fee amount exceed that amount charged by the board pursuant to Section 5006.

(c) The local agency shall make available to governmental agencies the information collected pursuant to this section.

(d) For the purposes of this section:

(1) "Board-designated local area" means the area entirely within the jurisdiction of the local agency that the board has determined shall be subject to this section, and any area for which the local agency has formally agreed to accept the required notice.

(2) "Local agency" means the local public agency or court appointed watermaster that has been designated by the board in accordance with subdivision (e).

(e) The board shall designate an entity as a local agency for the purposes of this section, if the board determines that all of the following apply:

(1) The entity has volunteered to be designated.

(2) The entity has responsibilities relating to the extraction or use of groundwater.

(3) The entity has made satisfactory arrangements with the board to identify which groundwater extractors are within the designated local area and to avoid the submission of notices to both the board and one or more local agencies.

(4) The entity has made satisfactory arrangements with the board to maintain records filed under this part for extractions within the designated local area, and to make those records available to governmental agencies.

*(Amended by Stats. 2006, Ch. 374, Sec. 1. Effective January 1, 2007.)*

## **PART 5.1. STATEMENTS OF WATER DIVERSIONS AND USE [5100. - 5107.]**

*(Part 5.1 added by Stats. 1965, Ch. 1430.)*

**§ 5100.** As used in this part:

(a) "Best available technologies" means technologies at the highest technically practical level, using flow totaling devices, and if necessary, data loggers and telemetry.

(b) "Best professional practices" means practices attaining and maintaining the accuracy of measurement and reporting devices and methods.

(c) "Diversion" means taking water by gravity or pumping from a surface stream or subterranean stream flowing through a known and definite channel, or other body of surface water, into a canal, pipeline, or other conduit, and includes impoundment of water in a reservoir.

(d) "Person" means all persons whether natural or artificial, including the United States of America, State of California, and all political subdivisions, districts, municipalities, and public agencies.

*(Amended by Stats. 2009, 7th Ex. Sess., Ch. 2, Sec. 3. Effective February 3, 2010.)*

**§ 5101.** Each person who, after December 31, 1965, diverts water shall file with the board, prior to July 1 of the succeeding year, a statement of his or her diversion and use, except that a statement is not required to be filed if the diversion is any of the following:

(a) From a spring that does not flow off the property on which it is located and from which the person's aggregate diversions do not exceed 25 acre-feet in any year.

(b) Covered by a registration for small domestic use, small irrigation use, or livestock stockpond use, or permit or license to appropriate water on file with the board.

(c) Included in a notice filed pursuant to Part 5 (commencing with Section 4999).

(d) Regulated by a watermaster appointed by the department and included in annual reports filed with a court or the board by the watermaster, which reports identify the persons who have diverted water and describe the general purposes and the place, the use, and the quantity of water that has been diverted from each source.

(e) Included in annual reports filed with a court or the board by a watermaster appointed by a court or pursuant to statute to administer a final judgment determining rights to water, which reports identify the persons who have diverted water and give the general place of use and the quantity of water that has been diverted from each source.

(f) For use in compliance with Article 2.5 (commencing with Section 1226) or Article 2.7 (commencing with Section 1228) of Chapter 1 of Part 2.

(g) A diversion that occurs before January 1, 2009, if any of the following applies:

(1) The diversion is from a spring that does not flow off the property on which it is located, and the person's aggregate diversions do not exceed 25 acre-feet in any year.

(2) The diversion is covered by an application to appropriate water on file with the board.

(3) The diversion is reported by the department in its hydrologic data bulletins.

(4) The diversion is included in the consumptive use data for the Delta lowlands published by the department in its hydrologic data bulletins.

*(Amended by Stats. 2011, Ch. 579, Sec. 10. Effective January 1, 2012.)*

**§ 5102.** The statement may be filed either by the person who is diverting water or, on his behalf, by an agency which he designates and which maintains a record of the water diverted. A separate statement shall be filed for each point of diversion.

*(Amended by Stats. 1967, Ch. 62.)*

**§ 5103.** Each statement shall be prepared on a form provided by the board. The statement shall include all of the following information:

(a) The name and address of the person who diverted water and of the person filing the statement.

(b) The name of the stream or other source from which water was diverted, and the name of the next major stream or other body of water to which the source is tributary.

(c) The place of diversion. The location of the diversion works shall be depicted on a specific United States Geological Survey topographic map, or shall be identified using the California Coordinate System, or latitude and longitude measurements. If assigned, the public land description to the nearest 40-acre subdivision and the assessor's parcel number shall also be provided.

(d) The capacity of the diversion works and of the storage reservoir, if any, and the months in which water was used during the preceding calendar year.

(e) (1) (A) At least monthly records of water diversions. The measurements of the diversion shall be made in accordance with Section 1840.

(B) (i) On and after July 1, 2016, the measurement of a diversion of 10 acre-feet or more per year shall comply with regulations adopted by the board pursuant to Article 3 (commencing with Section 1840) of Chapter 12 of Part 2.

(ii) The requirement of clause (i) is extended to January 1, 2017, for any statement filer that enters into a voluntary agreement that is acceptable to the board to reduce the statement filer's diversions during the 2015 irrigation season.

(2) (A) The terms of, and eligibility for, any grant or loan awarded or administered by the department, the board, or the California Bay-Delta Authority on behalf of a person that is subject to paragraph (1) shall be conditioned on compliance with that paragraph.

(B) Notwithstanding subparagraph (A), the board may determine that a person is eligible for a grant or loan even though the person is not complying with paragraph (1), if both of the following apply:

(i) The board determines that the grant or loan will assist the grantee or loan recipient in complying with paragraph (1).

(ii) The person has submitted to the board a one-year schedule for complying with paragraph (1).

(C) It is the intent of the Legislature that the requirements of this subdivision shall complement and not affect the scope of authority granted to the board by provisions of law other than this article.

(f) The purpose of use.

(g) A general description of the area in which the water was used. The location of the place of use shall be depicted on a specific United States Geological Survey topographic map and on any other maps with identifiable landmarks. If assigned, the public land description to the nearest 40-acre subdivision and the assessor's parcel number shall also be provided.

(h) The year in which the diversion was commenced as near as is known. *(Amended by Stats. 2015, Ch. 27, Sec. 17. Effective June 24, 2015.)*

**§ 5104.** (a) Supplemental statements shall be filed annually, before July 1 of each year. They shall contain the quantity of water diverted and the rate of

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diversion by months in the preceding calendar year and any change in the other information contained in the preceding statement.

(b) If there is a change in the name or address of the person diverting the water, a supplemental statement shall be filed with the board that includes the change in name or address.

(c) A supplemental statement filed prior to July 1, 2016, shall include data satisfying the requirements of subdivision (a) for any diversion of water in the 2012, 2013, and 2014 calendar years, that was not reported in a supplemental statement submitted prior to July 1, 2015.

(d) This section does not limit the authority of the board to require additional information or more frequent reporting under any other law.  
*(Amended by Stats. 2015, Ch. 27, Sec. 18. Effective June 24, 2015.)*

**§ 5105.** Upon failure of any person to file a statement required by this part, the board may, at the expense of such person, investigate and determine in writing the facts required by either Sections 5103 or 5104, provided the board first gives such person written notice of its intention to investigate and determine the facts and 60 days in which to file the statement without penalty.  
*(Added by Stats. 1965, Ch. 1430.)*

**§ 5106.** (a) Neither the statements submitted under this part nor the determination of facts by the board pursuant to Section 5105 shall establish or constitute evidence of a right to divert or use water.

(b) (1) The board may rely on the names and addresses included in statements submitted under this part for the purpose of determining the names and addresses of persons who are to receive notices with regard to proceedings before the board.

(2) Notwithstanding paragraph (1), any person may submit, in writing, a request to the board to provide notification to a different address, and the board shall provide the notification to that address.

(3) If the board provides notice to persons who file statements under this part, the notice shall not be determined to be inadequate on the basis that notice was not received by a person, other than a party to whom the board's action is directed, who fails to file a statement required to be filed under this part.

(4) This subdivision does not affect the requirement in Section 2527 to provide notice to all persons who own land that appears to be riparian to the stream system.

(c) In any proceeding before the board to determine whether an application for a permit to appropriate water should be approved, any statement submitted under this part or determination by the board pursuant to Section 5105 is evidence of the facts stated therein.  
*(Amended by Stats. 1997, Ch. 323, Sec. 22. Effective January 1, 1998.)*

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**§ 5107.** (a) The making of any willful misstatement pursuant to this part is a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail for not to exceed six months, or both.

(b) Any person who fails to file a statement required to be filed under this part for a diversion or use that occurs after January 1, 2009, who tampers with any measuring device, or who makes a material misstatement pursuant to this part may be liable civilly as provided in subdivisions (c) and (d).

(c) Civil liability may be administratively imposed by the board pursuant to Section 1055 in an amount not to exceed the following amounts:

(1) For failure to file a statement, one thousand dollars (\$1,000), plus five hundred dollars (\$500) per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the board has called the violation to the attention of that person.

(2) For a violation resulting from a physical malfunction of a measuring device not caused by the person or any other unintentional misstatement, two hundred fifty dollars (\$250), plus two hundred fifty dollars (\$250) per day for each additional day on which the measuring device continues to malfunction or the misstatement is not corrected if the person fails to correct or repair the measuring device or correct the misstatement within 60 days after the board has called the malfunction or violation to the attention of that person.

(3) For knowingly tampering with any measuring device or knowingly making a material misstatement in a statement filed under this part, twenty-five thousand dollars (\$25,000), plus one thousand dollars (\$1,000) for each day on which the violation continues if the person fails to correct the violation within 30 days after the board has called the violation to the attention of that person.

(4) For any other violation, five hundred dollars (\$500), plus two hundred fifty dollars (\$250) for each additional day on which the violation continues if the person fails to correct the violation within 30 days after the board has called the violation to the attention of that person.

(d) When an additional penalty may be imposed under subdivision (c) for failure to correct a violation or correct or repair a malfunctioning measuring device within a specified period after the violation has been called to a person's attention by the board, the board, for good cause, may provide for a longer period for correction of the problem, and the additional penalty shall not apply if the violation is corrected within the period specified by the board.

(e) In determining the appropriate amount, the board shall consider all relevant circumstances, including, but not limited to, all of the following factors:

- (1) The extent of harm caused by the violation.
- (2) The nature and persistence of the violation.
- (3) The length of time over which the violation occurs.
- (4) Any corrective action undertaken by the violator.

(f) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal.

*(Amended by Stats. 2009, 7th Ex. Sess., Ch. 2, Sec. 6. Effective February 3, 2010.)*

**PART 5.2. GROUNDWATER EXTRACTION REPORTING FOR  
PROBATIONARY BASINS AND BASINS WITHOUT A GROUNDWATER  
SUSTAINABILITY AGENCY [5200. - 5209.]**

*(Part 5.2 added by Stats. 2014, Ch. 347, Sec. 10.)*

**§ 5200.** The Legislature finds and declares that this part establishes groundwater reporting requirements for the purposes of subdivision (b) of Section 10724 and Chapter 11 (commencing with Section 10735) of Part 2.74 of Division 6.

*(Added by Stats. 2014, Ch. 347, Sec. 10. Effective January 1, 2015.)*

**§ 5201.** As used in this part:

(a) “Basin” has the same meaning as defined in Section 10721.

(b) “Board-designated local area” has the same meaning as defined in Section 5009.

(c) “De minimis extractor” has the same meaning as defined in Section 10721.

(d) “Groundwater” has the same meaning as defined in Section 10721.

(e) “Groundwater extraction facility” has the same meaning as defined in Section 10721.

(f) “Groundwater sustainability agency” has the same meaning as defined in Section 10721.

(g) “Person” has the same meaning as defined in Section 10735.

(h) “Personal information” has the same meaning as defined in Section 1798.3 of the Civil Code.

(i) “Probationary basin” has the same meaning as defined in Section 10735.

(j) “Water year” has the same meaning as defined in Section 10721.

*(Added by Stats. 2014, Ch. 347, Sec. 10. Effective January 1, 2015.)*

**§ 5202.** (a) This section applies to a person who does either of the following:

(1) Extracts groundwater from a probationary basin 90 days or more after the board designates the basin as a probationary basin pursuant to Section 10735.2.

(2) Extracts groundwater on or after July 1, 2017, in an area within a high- or medium-priority basin subject to the requirements of subdivision (a) of Section 10720.7 that is not within the management area of a groundwater sustainability agency and where the county does not assume responsibility to be

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the groundwater sustainability agency, as provided in subdivision (b) of Section 10724.

(b) Except as provided in subdivision (c), a person subject to this section shall file a report of groundwater extraction by December 15 of each year for extractions made in the preceding water year.

(c) Unless reporting is required pursuant to paragraph (2) of subdivision (c) of Section 10735.2, this section does not apply to any of the following:

(1) An extraction by a de minimis extractor.

(2) An extraction excluded from reporting pursuant to paragraph (1) of subdivision (c) of Section 10735.2.

(3) An extraction reported pursuant to Part 5 (commencing with Section 4999).

(4) An extraction that is included in annual reports filed with a court or the board by a watermaster appointed by a court or pursuant to statute to administer a final judgment determining rights to water. The reports shall identify the persons who have extracted water and give the general place of use and the quantity of water that has been extracted from each source.

(d) Except as provided in Section 5209, the report shall be filed with the board.

(e) The report may be filed by the person extracting water or on that person's behalf by an agency that person designates and that maintains a record of the water extracted.

(f) Each report shall be accompanied by the fee imposed pursuant to Section 1529.5.

*(Amended by Stats. 2015, Ch. 255, Sec. 1. Effective January 1, 2016.)*

**§ 5203.** Each report shall be prepared on a form provided by the board. The report shall include all of the following information:

(a) The name and address of the person who extracted groundwater and of the person filing the report.

(b) The name of the basin from which groundwater was extracted.

(c) The place of groundwater extraction. The location of the groundwater extraction facilities shall be depicted on a specific United States Geological Survey topographic map or shall be identified using the California Coordinate System or a latitude and longitude measurement. If assigned, the public land description to the nearest 40-acre subdivision and the assessor's parcel number shall be provided.

(d) The capacity of the groundwater extraction facilities.

(e) Monthly records of groundwater extractions. The measurements of the extractions shall be made by a methodology, water-measuring device, or combination thereof satisfactory to the board.

(f) The purpose of use.

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(g) A general description of the area in which the water was used. The location of the place of use shall be depicted on a specific United States Geological Survey topographic map or on any other maps with identifiable landmarks. If assigned, the public land description to the nearest 40-acre subdivision and the assessor's parcel number shall also be provided.

(h) As near as is known, the year in which the groundwater extraction was commenced.

(i) Any information required pursuant to paragraph (3) of subdivision (c) of Section 10735.2.

(j) Any other information that the board may require by regulation and that is reasonably necessary for purposes of this division or Part 2.74 (commencing with Section 10720) of Division 6.

*(Added by Stats. 2014, Ch. 347, Sec. 10. Effective January 1, 2015.)*

**§ 5204.** (a) If a person fails to file a report as required by this part, the board may, at the expense of that person, investigate and determine the information required to be reported pursuant to this part.

(b) The board shall give a person described in subdivision (a) notice of its intention to investigate and determine the information required to be reported pursuant to this part and 60 days in which to file a required report without penalty.

*(Added by Stats. 2014, Ch. 347, Sec. 10. Effective January 1, 2015.)*

**§ 5205.** A report submitted under this part or a determination of facts by the board pursuant to Section 5104 shall not establish or constitute evidence of a right to divert or use water.

*(Added by Stats. 2014, Ch. 347, Sec. 10. Effective January 1, 2015.)*

**§ 5206.** Personal information included in a report of groundwater extraction shall have the same protection from disclosure as is provided for information concerning utility customers of local agencies pursuant to Section 6254.16 of the Government Code.

*(Added by Stats. 2014, Ch. 347, Sec. 10. Effective January 1, 2015.)*

**§ 5207.** A right to extract groundwater that may otherwise occur shall not arise or accrue to, and a statute of limitations shall not operate in favor of, a person required to file a report pursuant to this part until the person files the report.

*(Added by Stats. 2014, Ch. 347, Sec. 10. Effective January 1, 2015.)*

**§ 5208.** Section 5107 applies to a report or measuring device required pursuant to this part. For purposes of Section 5107, a report of groundwater extraction, measuring device, or misstatement required, used, or made pursuant to this part shall be considered the equivalent of a statement, measuring device, or misstatement required, used, or made pursuant to Part 5.1 (commencing with Section 5100).

*(Added by Stats. 2014, Ch. 347, Sec. 10. Effective January 1, 2015.)*

**§ 5209.** For groundwater extractions in a board-designated local area, reports required pursuant to this part shall be submitted to the entity designated pursuant to subdivision (e) of Section 5009 if both of the following occur:

(a) The board determines that the requirements of subdivision (e) of Section 5009 have been satisfied with respect to extractions subject to reporting pursuant to this part, in addition to any groundwater extractions subject to Part 5 (commencing with Section 4999).

(b) The designated entity has made satisfactory arrangements to collect and transmit to the board any fees imposed pursuant to paragraph (2) of subdivision (b) of Section 1529.5.

*(Added by Stats. 2014, Ch. 347, Sec. 10. Effective January 1, 2015.)*

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## **DIVISION 4. WELLS, PUMPING PLANTS, CONDUITS AND STREAMS [7000. - 7075.]**

*(Division 4 enacted by Stats. 1943, Ch. 368.)*

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### **CHAPTER 6. USE OF STREAMS AS CONDUITS [7075. - 7075.]**

*(Chapter 6 enacted by Stats. 1943, Ch. 368.)*

**§ 7075.** Water which has been appropriated may be turned into the channel of another stream, mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another shall not be diminished.

*(Enacted by Stats. 1943, Ch. 368.)*

## **DIVISION 6. CONSERVATION, DEVELOPMENT, AND UTILIZATION OF STATE WATER RESOURCES [10000. - 12999.]**

*(Heading of Division 6 amended by Stats. 1957, Ch. 1932.)*

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### **PART 1.5. THE CALIFORNIA WATER PLAN [10004. - 10016.]**

*(Part 1.5 added by Stats. 1959, Ch. 2053.)*

#### **CHAPTER 1. THE CALIFORNIA WATER PLAN [10004. - 10013.]**

*(Chapter 1 heading added by Stats. 2007, Ch. 319, Sec. 2.)*

**§ 10004.** (a) The plan for the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state which is set forth and described in Bulletin No. 1 of the State Water Resources

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Board entitled “Water Resources of California,” Bulletin No. 2 of the State Water Resources Board entitled, “Water Utilization and Requirements of California,” and Bulletin No. 3 of the department entitled, “The California Water Plan,” with any necessary amendments, supplements, and additions to the plan, shall be known as “The California Water Plan.”

(b) (1) The department shall update The California Water Plan on or before December 31, 2003, and every five years thereafter. The department shall report the amendments, supplements, and additions included in the updates of The California Water Plan, together with a summary of the department’s conclusions and recommendations, to the Legislature in the session in which the updated plan is issued.

(2) The department shall establish an advisory committee, comprised of representatives of agricultural and urban water suppliers, local government, business, production agriculture, and environmental interests, and other interested parties, to assist the department in the updating of The California Water Plan. The department shall consult with the advisory committee in carrying out this section. The department shall provide written notice of meetings of the advisory committee to any interested person or entity that request the notice. The meetings shall be open to the public.

(3) The department shall release a preliminary draft of The California Water Plan, as updated, upon request, to interested persons and entities throughout the state for their review and comments. The department shall provide these persons and entities an opportunity to present written or oral comments on the preliminary draft. The department shall consider these comments in the preparation of the final publication of The California Water Plan, as updated.

*(Amended by Stats. 2000, Ch. 720, Sec. 2. Effective January 1, 2001.)*

**§ 10004.5.** As part of the requirement of the department to update The California Water Plan pursuant to subdivision (b) of Section 10004, the department shall include in the plan a discussion of various strategies, including, but not limited to, those relating to the development of new water storage facilities, water conservation, water recycling, desalination, conjunctive use, and water transfers that may be pursued in order to meet the future water needs of the state. The department shall also include a discussion of the potential for alternative water pricing policies to change current and projected uses. The department shall include in the plan a discussion of the potential advantages and disadvantages of each strategy and an identification of all federal and state permits, approvals, or entitlements that are anticipated to be required in order to implement the various components of the strategy.

*(Amended by Stats. 2000, Ch. 720, Sec. 3. Effective January 1, 2001.)*

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**§ 10004.6.** (a) As part of updating The California Water Plan every five years pursuant to subdivision (b) of Section 10004, the department shall conduct a study to determine the amount of water needed to meet the state's future needs and to recommend programs, policies, and facilities to meet those needs.

(b) The department shall consult with the advisory committee established pursuant to subdivision (b) of Section 10004 in carrying out this section.

(c) On or before January 1, 2002, and one year prior to issuing each successive update to The California Water Plan, the department shall release a preliminary draft of the assumptions and other estimates upon which the study will be based, to interested persons and entities throughout the state for their review and comments. The department shall provide these persons and entities an opportunity to present written or oral comments on the preliminary draft. The department shall consider these documents when adopting the final assumptions and estimates for the study. For the purpose of carrying out this subdivision, the department shall release, at a minimum, assumptions and other estimates relating to all of the following:

(1) Basin hydrology, including annual rainfall, estimated unimpaired streamflow, depletions, and consumptive uses.

(2) Groundwater supplies, including estimates of sustainable yield, supplies necessary to recover overdraft basins, and supplies lost due to pollution and other groundwater contaminants.

(3) Current and projected land use patterns, including the mix of residential, commercial, industrial, agricultural, and undeveloped lands.

(4) Environmental water needs, including regulatory instream flow requirements, nonregulated instream uses, and water needs by wetlands, preserves, refuges, and other managed and unmanaged natural resource lands.

(5) Current and projected population.

(6) Current and projected water use for all of the following:

(A) Interior uses in a single-family dwelling.

(B) Exterior uses in a single-family dwelling.

(C) All uses in a multifamily dwelling.

(D) Commercial uses.

(E) Industrial uses.

(F) Parks and open spaces.

(G) Agricultural water diversion and use.

(7) Evapotranspiration rates for major crop types, including estimates of evaporative losses by irrigation practice and the extent to which evaporation reduces transpiration.

(8) Current and projected adoption of urban and agricultural conservation practices.

(9) Current and projected supplies of water provided by water recycling and reuse.

(d) The department shall include a discussion of the potential for alternative water pricing policies to change current and projected water uses identified pursuant to paragraph (6) of subdivision (c).

(e) Nothing in this section requires or prohibits the department from updating any data necessary to update The California Water Plan pursuant to subdivision (b) of Section 10004.

*(Amended by Stats. 2007, Ch. 675, Sec. 5. Effective January 1, 2008.)*

**§ 10005.** (a) It is hereby declared that the people of the state have a primary interest in the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state by all individuals and entities and that it is the policy of the state that The California Water Plan, with any necessary amendments, supplements, and additions to the plan, is accepted as the master plan which guides the orderly and coordinated control, protection, conservation, development, management and efficient utilization of the water resources of the state.

(b) The declaration set forth in subdivision (a) does not constitute approval for the construction of specific projects or routes for transfer of water, or for financial assistance, by the state, without further legislative action, nor shall the declaration be construed as a prohibition of the development of the water resources of the state by any entity.

*(Amended by Stats. 1991, Ch. 620, Sec. 2.)*

**§ 10005.1.** The department or, at the department's request, the California Water Commission, shall conduct a series of hearings with interested persons, organizations, local, state, and federal agencies, and representatives of the diverse geographical areas and interests of the state.

*(Added by Stats. 1991, Ch. 620, Sec. 3.)*

**§ 10005.2.** Prior to holding a hearing pursuant to Section 10005.1, the department shall give notice by mail of the hearing to persons and entities which have requested notice and have provided their name and address to the department.

*(Added by Stats. 1991, Ch. 620, Sec. 4.)*

**§ 10006.** The provisions of this part do not repeal or modify any of the provisions of Part 3 of this division.

*(Added by Stats. 1959, Ch. 2053.)*

**§ 10007.** Notwithstanding anything contained in this part, all applications heretofore filed by the Department of Finance or by the Department of Water Resources under Part 2 of Division 6 shall remain valid and shall retain and have the status and priority accorded to such applications as now or hereafter provided in said Part 2.

*(Added by Stats. 1959, Ch. 2053.)*

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**§ 10008.** The Legislature hereby finds and declares that agreements which provide for the transfer of water from the federal Central Valley Project to public entities supplying water for domestic or irrigation use offer potential benefits to California's hard-pressed farmers and to California's water-dependent urban areas.

It is the intent of the Legislature that these contracts be entered into for the purposes of strengthening California's economy, serving the public, and protecting the environment.

The director shall continue to pursue negotiations with the United States Bureau of Reclamation to contract for the interim rights to stored water from the federal Central Valley Project for use in the State Water Resources Development System by state water supply contractors.

*(Added by Stats. 1986, Ch. 1241, Sec. 1. Effective September 26, 1986.)*

**§ 10009.** The director shall pursue discussions with the United States Bureau of Reclamation to permit persons and public entities which have entitlements to water from the federal Central Valley Project, to enter into legally binding contracts with any public entity which supplies water for domestic use, irrigation use, or environmental protection in this state for the transfer of federal water entitlements during times of shortage.

*(Added by Stats. 1986, Ch. 1241, Sec. 2. Effective September 26, 1986.)*

**§ 10011.** (a) In preparing the California Water Plan, the director shall conduct at least one public hearing within the boundaries of the Sacramento-San Joaquin Delta, and shall solicit the comments of water agencies within the delta, agricultural groups representative of delta agricultural activity, environmental groups concerned with protecting delta wildlife habitat, and groups representative of those who utilize water exported from the delta.

(b) The California Water Plan shall include a discussion of various alternatives, including their advantages and disadvantages, for improving and protecting the current uses and configuration of the Sacramento-San Joaquin Delta.

(c) Subdivisions (a) and (b) shall be implemented only to the extent money is appropriated in the annual Budget Act to carry out this section.

*(Added by Stats. 1992, Ch. 953, Sec. 1. Effective January 1, 1993.)*

**§ 10013.** The department, as a part of the preparation of the department's Bulletin 160-03, shall include in the California Water Plan a report on the development of regional and local water projects within each hydrologic region of the state, as described in the department's Bulletin 160-98, to improve water supplies to meet municipal, agricultural, and environmental water needs and minimize the need to import water from other hydrologic regions. The report shall include, but is not limited to, regional and local water projects that use

technologies for desalting brackish groundwater and ocean water, reclaiming water for use within the community generating the water to be reclaimed, the construction of improved potable water treatment facilities so that water from sources determined to be unsuitable can be used, and the construction of dual water systems and brine lines, particularly in connection with new developments and when replacing water piping in developed or redeveloped areas.

*(Amended by Stats. 2002, Ch. 664, Sec. 224. Effective January 1, 2003.)*

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## **PART 2. APPROPRIATION OF WATER BY DEPARTMENT OF WATER RESOURCES [10500. - 10506.]**

*(Heading of Part 2 amended by Stats. 1957, Ch. 1932.)*

**§ 10500.** The department shall make and file applications for any water which in its judgment is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the state.

Any application filed pursuant to this part shall be made and filed pursuant to Part 2 (commencing with Section 1200) of Division 2 of this code and the rules and regulations of the State Water Resources Control Board relating to the appropriation of water insofar as applicable thereto.

Applications filed pursuant to this part shall have priority, as of the date of filing, over any application made and filed subsequent thereto. The statutory requirements of Part 2 (commencing at Section 1200) of Division 2 relating to diligence shall not apply to applications filed under this part, except as otherwise provided in Section 10504.

*(Amended by Stats. 1983, Ch. 481, Sec. 2.)*

**§ 10504.** All applications made and filed pursuant to Section 10500 shall be transferred to the State Water Resources Control Board and held by the board for the purposes of this part. The board may release from priority or assign any portion of any application filed under this part when the release or assignment is for the purpose of development not in conflict with such general or coordinated plan or with water quality objectives established pursuant to law. The assignee of any such application whether heretofore or hereafter assigned, is subject to all the requirements of diligence as provided in Part 2 (commencing with Section 1200) of Division 2 of this code. "Assignee" as used herein includes, but is not limited to, state agencies, commissions and departments, and the United States of America or any of its departments or agencies.

*(Amended by Stats. 1967, Ch. 284.)*

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**§ 10504.01.** Each petition for assignment of all or a portion of an application filed pursuant to this part, which application has not been completed in accordance with law and the regulations of the board, shall include as a part thereof a proposed completed application consistent with the requested assignment, and describing petitioner's proposed project. As soon as practicable after the receipt of such petition the board shall issue and deliver a notice of the petition and proposed completed application in accordance with Article 1 (commencing with Section 1300), Chapter 3, Part 2, Division 2 of this code and shall also deliver a copy of the notice to the department and to the board of supervisors of each county in which the water originates and in which the water is to be used. Further procedure with respect to each such petition shall be in accordance with Chapters 3 (commencing with Section 1300), 4 (commencing with Section 1330) and 5 (commencing with Section 1340), Part 2, Division 2 of this code relating to notice, protests, hearing, and action on applications for permits to appropriate water. The hearing shall be for the purpose of determining whether the application should be assigned pursuant to Sections 10504 and 10505 and whether the proposed completed application submitted by the petitioner should be approved in whole or in part. When the board's determination is favorable to the petitioner, it shall assign all or a portion of the application to the petitioner, accept and approve the assigned portion, and issue a permit as in other cases provided by law. Any portion of the application which is not assigned shall remain with the board subject to further disposition by it pursuant to the provisions of this part.

Two or more petitions for assignment of the same or related applications may be consolidated for purposes of hearing and determination with each other and with other applications, in the discretion of the board.

*(Added by Stats. 1965, Ch. 989.)*

**§ 10504.1.** Before any application made and filed pursuant to Section 10500 is assigned or released from priority, the State Water Resources Control Board shall hold a public hearing. Written notice of the time and place of the hearing shall be mailed, at least 45 days prior to the date set for the hearing, to the board of supervisors of each county in the area in which the water originates and in the area or areas in which the water is to be used. Any interested persons may appear at the hearing and present their views and objections as to the proposed action.

*(Amended by Stats. 1967, Ch. 284.)*

**§ 10504.02.** Procedure with respect to petitions for assignment of all or a portion of applications filed pursuant to this part, which applications have been completed in accordance with law and the regulations of the board, shall be in accordance with the provisions of Section 10504.01 insofar as they are applicable.

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*(Added by Stats. 1965, Ch. 989.)*

**§ 10504.5.** In order to insure that projects will be constructed in accordance with a general or coordinated plan for the development of water:

(a) The recipient of a release from priority or assignment under this part shall, before making any changes determined by the State Water Resources Control Board to be substantial in the project in furtherance of which the release or assignment was made, submit such changes to the State Water Resources Control Board for its approval. The board shall approve any such change only if it determines that such change will not conflict with the general or coordinated plan or with water quality objectives established pursuant to law. All permits and licenses issued pursuant to applications so released or assigned shall contain terms conditioning such permits and licenses upon compliance with this subdivision.

(b) The holder of applications that have been assigned, or in favor of which a release from priority has been made, shall submit any proposed amendments to such applications to the State Water Resources Control Board. The board shall approve such amendments only if it determines that the amendments will not conflict with the general or coordinated plan or with water quality objectives established pursuant to law. The board shall notify the holder of the application of its approval or disapproval.

*(Amended by Stats. 1967, Ch. 284.)*

**§ 10505.** No priority under this part shall be released nor assignment made of any application that will, in the judgment of the board, deprive the county in which the water covered by the application originates of any such water necessary for the development of the county.

*(Amended by Stats. 1965, Ch. 989.)*

**§ 10505.5.** Every application heretofore or hereafter made and filed pursuant to Section 10500, and held by the State Water Resources Control Board, shall be amended to provide, and any permit hereafter issued pursuant to such an application, and any license issued pursuant to such a permit, shall provide, that the application, permit, or license shall not authorize the use of any water outside of the county of origin which is necessary for the development of the county.

*(Added by Stats. 1969, Ch. 1359.)*

**§ 10506.** Every state department or state officer, upon request of the department, shall furnish any service or assistance in the investigation of the need or feasibility of all or any part of such general or coordinated plan and the cost of construction, operation, and maintenance thereof, of the financing of construction and rates or returns that may be required to operate and maintain all or any part of the plan, of the amortization of bonded or other indebtedness

that may be placed on all or any part of the plan for the cost of construction thereof, and shall render any other service which the department deems necessary for the maintenance of any priority in the State for the purposes of all or any part or unit of the plan and the future development and completion of it in the public interest.

*(Amended by Stats. 1957, Ch. 1932.)*

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## **PART 2.74. SUSTAINABLE GROUNDWATER MANAGEMENT [10720. - 10737.8.]**

*(Part 2.74 added by Stats. 2014, Ch. 346, Sec. 3.)*

### **CHAPTER 1. GENERAL PROVISIONS [10720. - 10720.9.]**

*(Chapter 1 added by Stats. 2014, Ch. 346, Sec. 3.)*

**§ 10720.** This part shall be known, and may be cited, as the “Sustainable Groundwater Management Act.”

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10720.1.** In enacting this part, it is the intent of the Legislature to do all of the following:

(a) To provide for the sustainable management of groundwater basins.

(b) To enhance local management of groundwater consistent with rights to use or store groundwater and Section 2 of Article X of the California Constitution. It is the intent of the Legislature to preserve the security of water rights in the state to the greatest extent possible consistent with the sustainable management of groundwater.

(c) To establish minimum standards for sustainable groundwater management.

(d) To provide local groundwater agencies with the authority and the technical and financial assistance necessary to sustainably manage groundwater.

(e) To avoid or minimize subsidence.

(f) To improve data collection and understanding about groundwater.

(g) To increase groundwater storage and remove impediments to recharge.

(h) To manage groundwater basins through the actions of local governmental agencies to the greatest extent feasible, while minimizing state intervention to only when necessary to ensure that local agencies manage groundwater in a sustainable manner.

(i) To provide a more efficient and cost-effective groundwater adjudication process that protects water rights, ensures due process, prevents unnecessary delay, and furthers the objectives of this part.

*(Amended by Stats. 2015, Ch. 676, Sec. 2. Effective January 1, 2016.)*

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**§ 10720.3.** (a) This part applies to all groundwater basins in the state.

(b) To the extent authorized under federal or tribal law, this part applies to an Indian tribe and to the federal government, including, but not limited to, the United States Department of Defense.

(c) The federal government or any federally recognized Indian tribe, appreciating the shared interest in assuring the sustainability of groundwater resources, may voluntarily agree to participate in the preparation or administration of a groundwater sustainability plan or groundwater management plan under this part through a joint powers authority or other agreement with local agencies in the basin. A participating tribe shall be eligible to participate fully in planning, financing, and management under this part, including eligibility for grants and technical assistance, if any exercise of regulatory authority, enforcement, or imposition and collection of fees is pursuant to the tribe's independent authority and not pursuant to authority granted to a groundwater sustainability agency under this part.

(d) In an adjudication of rights to the use of groundwater, and in the management of a groundwater basin or subbasin by a groundwater sustainability agency or by the board, federally reserved water rights to groundwater shall be respected in full. In case of conflict between federal and state law in that adjudication or management, federal law shall prevail. The voluntary or involuntary participation of a holder of rights in that adjudication or management shall not subject that holder to state law regarding other proceedings or matters not authorized by federal law. This subdivision is declaratory of existing law.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10720.5.** (a) Groundwater management pursuant to this part shall be consistent with Section 2 of Article X of the California Constitution. Nothing in this part modifies rights or priorities to use or store groundwater consistent with Section 2 of Article X of the California Constitution, except that in basins designated medium- or high-priority basins by the department, no extraction of groundwater between January 1, 2015, and the date of adoption of a groundwater sustainability plan pursuant to this part or the approval by the department of an alternative submitted under Section 10733.6, whichever is sooner, may be used as evidence of, or to establish or defend against, any claim of prescription.

(b) Nothing in this part, or in any groundwater management plan adopted pursuant to this part, determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.

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(c) Water rights may be determined in an adjudication action pursuant to Chapter 7 (commencing with Section 830) of Title 10 of Part 2 of the Code of Civil Procedure.

*(Amended by Stats. 2015, Ch. 676, Sec. 3. Effective January 1, 2016.)*

**§ 10720.7.** (a) (1) By January 31, 2020, all basins designated as high- or medium-priority basins by the department that have been designated in Bulletin 118, as it may be updated or revised on or before January 1, 2017, as basins that are subject to critical conditions of overdraft shall be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans pursuant to this part.

(2) By January 31, 2022, all basins designated as high- or medium-priority basins by the department that are not subject to paragraph (1) shall be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans pursuant to this part.

(b) The Legislature encourages and authorizes basins designated as low- and very low priority basins by the department to be managed under groundwater sustainability plans pursuant to this part. Chapter 11 (commencing with Section 10735) does not apply to a basin designated as a low- or very low priority basin.

*(Amended by Stats. 2015, Ch. 255, Sec. 3. Effective January 1, 2016.)*

**§ 10720.8.** (a) Except as provided in subdivision (e), this part does not apply to the following adjudicated areas or a local agency that conforms to the requirements of an adjudication of water rights for one of the following adjudicated areas:

- (1) Beaumont Basin.
- (2) Brite Basin.
- (3) Central Basin.
- (4) Chino Basin.
- (5) Cucamonga Basin.
- (6) Cummings Basin.
- (7) Goleta Basin.
- (8) Lytle Basin.
- (9) Main San Gabriel Basin.
- (10) Mojave Basin Area.
- (11) Puente Basin.
- (12) Raymond Basin.
- (13) Rialto-Colton Basin.
- (14) Riverside Basin.
- (15) San Bernardino Basin Area.
- (16) San Jacinto Basin.
- (17) Santa Margarita River Watershed.

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- (18) Santa Maria Valley Basin.
  - (19) Santa Paula Basin.
  - (20) Scott River Stream System.
  - (21) Seaside Basin.
  - (22) Six Basins.
  - (23) Tehachapi Basin.
  - (24) Upper Los Angeles River Area.
  - (25) Warren Valley Basin.
  - (26) West Coast Basin.

(b) The Antelope Valley basin at issue in the Antelope Valley Groundwater Cases (Judicial Council Coordination Proceeding Number 4408) shall be treated as an adjudicated basin pursuant to this section if the superior court issues a final judgment, order, or decree.

(c) Any groundwater basin or portion of a groundwater basin in Inyo County managed pursuant to the terms of the stipulated judgment in *City of Los Angeles v. Board of Supervisors of the County of Inyo, et al.* (Inyo County Case No. 12908) shall be treated as an adjudicated area pursuant to this section.

(d) The Los Osos Groundwater Basin at issue in *Los Osos Community Service District v. Southern California Water Company [Golden State Water Company] et al.* (San Luis Obispo County Superior Court Case No. CV 040126) shall be treated as an adjudicated basin pursuant to this section if the superior court issues a final judgment, order, or decree.

(e) If an adjudication action has determined the rights to extract groundwater for only a portion of a basin, subdivisions (a), (b), (c), and (d) apply only within the area for which the adjudication action has determined those rights.

(f) The watermaster or a local agency within a basin identified in subdivision (a) shall do all of the following:

(1) By April 1, 2016, submit to the department a copy of a governing final judgment, or other judicial order or decree, and any amendments entered before April 1, 2016.

(2) Within 90 days of entry by a court, submit to the department a copy of any amendment made and entered by the court to the governing final judgment or other judicial order or decree on or after April 1, 2016.

(3) By April 1, 2016, and annually thereafter, submit to the department a report containing the following information to the extent available for the portion of the basin subject to the adjudication:

(A) Groundwater elevation data unless otherwise submitted pursuant to Section 10932.

(B) Annual aggregated data identifying groundwater extraction for the preceding water year.

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(C) Surface water supply used for or available for use for groundwater recharge or in-lieu use.

(D) Total water use.

(E) Change in groundwater storage.

(F) The annual report submitted to the court.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10720.9.** All relevant state agencies, including, but not limited to, the board, the regional water quality control boards, the department, and the Department of Fish and Wildlife, shall consider the policies of this part, and any groundwater sustainability plans adopted pursuant to this part, when revising or adopting policies, regulations, or criteria, or when issuing orders or determinations, where pertinent.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

## **CHAPTER 2. DEFINITIONS [10721. - 10721.]**

*(Chapter 2 added by Stats. 2014, Ch. 346, Sec. 3.)*

**§ 10721.** Unless the context otherwise requires, the following definitions govern the construction of this part:

(a) “Adjudication action” means an action filed in the superior or federal district court to determine the rights to extract groundwater from a basin or store water within a basin, including, but not limited to, actions to quiet title respecting rights to extract or store groundwater or an action brought to impose a physical solution on a basin.

(b) “Basin” means a groundwater basin or subbasin identified and defined in Bulletin 118 or as modified pursuant to Chapter 3 (commencing with Section 10722).

(c) “Bulletin 118” means the department’s report entitled “California’s Groundwater: Bulletin 118” updated in 2003, as it may be subsequently updated or revised in accordance with Section 12924.

(d) “Coordination agreement” means a legal agreement adopted between two or more groundwater sustainability agencies that provides the basis for coordinating multiple agencies or groundwater sustainability plans within a basin pursuant to this part.

(e) “De minimis extractor” means a person who extracts, for domestic purposes, two acre-feet or less per year.

(f) “Governing body” means the legislative body of a groundwater sustainability agency.

(g) “Groundwater” means water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water that flows in known and definite channels.

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(h) “Groundwater extraction facility” means a device or method for extracting groundwater from within a basin.

(i) “Groundwater recharge” or “recharge” means the augmentation of groundwater, by natural or artificial means.

(j) “Groundwater sustainability agency” means one or more local agencies that implement the provisions of this part. For purposes of imposing fees pursuant to Chapter 8 (commencing with Section 10730) or taking action to enforce a groundwater sustainability plan, “groundwater sustainability agency” also means each local agency comprising the groundwater sustainability agency if the plan authorizes separate agency action.

(k) “Groundwater sustainability plan” or “plan” means a plan of a groundwater sustainability agency proposed or adopted pursuant to this part.

(l) “Groundwater sustainability program” means a coordinated and ongoing activity undertaken to benefit a basin, pursuant to a groundwater sustainability plan.

(m) “In-lieu use” means the use of surface water by persons that could otherwise extract groundwater in order to leave groundwater in the basin.

(n) “Local agency” means a local public agency that has water supply, water management, or land use responsibilities within a groundwater basin.

(o) “Operator” means a person operating a groundwater extraction facility. The owner of a groundwater extraction facility shall be conclusively presumed to be the operator unless a satisfactory showing is made to the governing body of the groundwater sustainability agency that the groundwater extraction facility actually is operated by some other person.

(p) “Owner” means a person owning a groundwater extraction facility or an interest in a groundwater extraction facility other than a lien to secure the payment of a debt or other obligation.

(q) “Personal information” has the same meaning as defined in Section 1798.3 of the Civil Code.

(r) “Planning and implementation horizon” means a 50-year time period over which a groundwater sustainability agency determines that plans and measures will be implemented in a basin to ensure that the basin is operated within its sustainable yield.

(s) “Public water system” has the same meaning as defined in Section 116275 of the Health and Safety Code.

(t) “Recharge area” means the area that supplies water to an aquifer in a groundwater basin.

(u) “Sustainability goal” means the existence and implementation of one or more groundwater sustainability plans that achieve sustainable groundwater management by identifying and causing the implementation of measures targeted to ensure that the applicable basin is operated within its sustainable yield.

(v) “Sustainable groundwater management” means the management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results.

(w) “Sustainable yield” means the maximum quantity of water, calculated over a base period representative of long-term conditions in the basin and including any temporary surplus, that can be withdrawn annually from a groundwater supply without causing an undesirable result.

(x) “Undesirable result” means one or more of the following effects caused by groundwater conditions occurring throughout the basin:

(1) Chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply if continued over the planning and implementation horizon. Overdraft during a period of drought is not sufficient to establish a chronic lowering of groundwater levels if extractions and groundwater recharge are managed as necessary to ensure that reductions in groundwater levels or storage during a period of drought are offset by increases in groundwater levels or storage during other periods.

(2) Significant and unreasonable reduction of groundwater storage.

(3) Significant and unreasonable seawater intrusion.

(4) Significant and unreasonable degraded water quality, including the migration of contaminant plumes that impair water supplies.

(5) Significant and unreasonable land subsidence that substantially interferes with surface land uses.

(6) Depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water.

(y) “Water budget” means an accounting of the total groundwater and surface water entering and leaving a basin including the changes in the amount of water stored.

(z) “Watermaster” means a watermaster appointed by a court or pursuant to other law.

(aa) “Water year” means the period from October 1 through the following September 30, inclusive.

(ab) “Wellhead protection area” means the surface and subsurface area surrounding a water well or well field that supplies a public water system through which contaminants are reasonably likely to migrate toward the water well or well field.

*(Amended by Stats. 2015, Ch. 666, Sec. 2. Effective January 1, 2016.)*

### **CHAPTER 3. BASIN BOUNDARIES [10722. - 10722.4.]**

*(Chapter 3 added by Stats. 2014, Ch. 346, Sec. 3.)*

**§ 10722.** Unless other basin boundaries are established pursuant to this chapter, a basin’s boundaries shall be as identified in Bulletin 118.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

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**§ 10722.2.** (a) A local agency or an entity directed by the court in an adjudication action to file the request may request that the department revise the boundaries of a basin, including the establishment of new subbasins. A request shall be supported by the following information:

(1) Information demonstrating that the proposed adjusted basin can be the subject of sustainable groundwater management.

(2) Technical information regarding the boundaries of, and conditions in, the proposed adjusted basin.

(3) Information demonstrating that the entity proposing the basin boundary adjustment consulted with interested local agencies and public water systems in the affected basins before filing the proposal with the department.

(4) Other information the department deems necessary to justify revision of the basin's boundary.

(b) By January 1, 2016, the department shall adopt regulations regarding the information required to comply with subdivision (a), including the methodology and criteria to be used to evaluate the proposed revision. The department shall adopt the regulations, including any amendments thereto, authorized by this section as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding the Administrative Procedure Act, emergency regulations adopted by the department pursuant to this section shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the department.

(c) Methodology and criteria established pursuant to subdivision (b) shall address all of the following:

(1) How to assess the likelihood that the proposed basin can be sustainably managed.

(2) How to assess whether the proposed basin would limit the sustainable management of adjacent basins.

(3) How to assess whether there is a history of sustainable management of groundwater levels in the proposed basin.

(d) Prior to adopting the regulations pursuant to subdivision (b), the department shall conduct three public meetings to consider public comments. The department shall publish the draft regulations on its Internet Web site at least 30 days before the public meetings. One meeting shall be conducted at a location in northern California, one meeting shall be conducted at a location in the central valley of California, and one meeting shall be conducted at a location in southern California.

(e) The department shall provide a copy of its draft revision of a basin's boundaries to the California Water Commission. The California Water Commission shall hear and comment on the draft revision within 60 days after the department provides the draft revision to the commission.  
(Amended by Stats. 2015, Ch. 676, Sec. 4. Effective January 1, 2016.)

**§ 10722.4.** (a) Pursuant to Section 10933, for the purposes of this part the department shall categorize each basin as one of the following priorities:

- (1) High priority.
- (2) Medium priority.
- (3) Low priority.
- (4) Very low priority.

(b) The initial priority for each basin shall be established by the department pursuant to Section 10933 no later than January 31, 2015.

(c) Any time the department updates Bulletin 118 boundaries pursuant to subdivision (b) of Section 12924, the department shall reassess the prioritization pursuant to Section 10933.

(d) If the department changes priorities pursuant to Section 10933 to elevate a basin from a low- or very low priority basin to a medium- or high-priority basin after January 31, 2015, the agency formation and planning deadlines of this part shall be extended as follows:

(1) A local agency, or combination of local agencies overlying a groundwater basin, shall have two years from the date of reprioritization to either establish a groundwater sustainability agency pursuant to Chapter 4 (commencing with Section 10723) or two years to satisfy the requirements of Section 10733.6.

(2) A groundwater sustainability agency shall have five years from the date of reprioritization to meet the requirements of subdivision (a) of Section 10720.7, except that if the reprioritization occurs before January 31, 2017, a groundwater sustainability agency subject to paragraph (2) of subdivision (a) of Section 10720.7 shall have until January 31, 2022.

(Amended by Stats. 2015, Ch. 667, Sec. 1.5. Effective January 1, 2016.)

#### **CHAPTER 4. ESTABLISHING GROUNDWATER SUSTAINABILITY AGENCIES [10723. - 10724.]**

(Chapter 4 added by Stats. 2014, Ch. 346, Sec. 3.)

**§ 10723.** (a) Except as provided in subdivision (c), any local agency or combination of local agencies overlying a groundwater basin may decide to become a groundwater sustainability agency for that basin.

(b) Before deciding to become a groundwater sustainability agency, and after publication of notice pursuant to Section 6066 of the Government Code,

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the local agency or agencies shall hold a public hearing in the county or counties overlying the basin.

(c) (1) Except as provided in paragraph (2), the following agencies created by statute to manage groundwater shall be deemed the exclusive local agencies within their respective statutory boundaries with powers to comply with this part:

(A) Alameda County Flood Control and Water Conservation District, Zone 7.

(B) Alameda County Water District.

(C) Desert Water Agency.

(D) Fox Canyon Groundwater Management Agency.

(E) Honey Lake Valley Groundwater Management District.

(F) Long Valley Groundwater Management District.

(G) Mendocino City Community Services District.

(H) Mono County Tri-Valley Groundwater Management District.

(I) Monterey Peninsula Water Management District.

(J) Ojai Groundwater Management Agency.

(K) Orange County Water District.

(L) Pajaro Valley Water Management Agency.

(M) Santa Clara Valley Water District.

(N) Sierra Valley Groundwater Management District.

(O) Willow Creek Groundwater Management Agency.

(2) An agency identified in this subdivision may opt out of being the exclusive groundwater management agency within its statutory boundaries by sending a notice to the department, which shall be posted on the department's Internet Web site within 15 days of receipt. If an agency identified in paragraph (1) opts out of being the exclusive groundwater management agency, any other local agency or combination of local agencies operating within the statutory boundaries of the agency that has opted out may notify the department pursuant to Section 10723.8 of its decision to be the groundwater sustainability agency.

(3) A local agency listed in paragraph (1) may comply with this part by meeting the requirements of Section 10733.6 or opting to become a groundwater sustainability agency pursuant to this section. A local agency with authority to implement a basin-specific management plan pursuant to its principal act shall not exercise any authorities granted in this part in a manner inconsistent with any prohibitions or limitations in its principal act unless the governing board of the local agency makes a finding that the agency is unable to sustainably manage the basin without the prohibited authority.

(d) The decision of a local agency or combination of agencies to become a groundwater sustainability agency shall take effect as provided in Section 10723.8.

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*(Amended by Stats. 2015, Ch. 255, Sec. 6. Effective January 1, 2016.)*

**§ 10723.2.** The groundwater sustainability agency shall consider the interests of all beneficial uses and users of groundwater, as well as those responsible for implementing groundwater sustainability plans. These interests include, but are not limited to, all of the following:

- (a) Holders of overlying groundwater rights, including:
  - (1) Agricultural users.
  - (2) Domestic well owners.
- (b) Municipal well operators.
- (c) Public water systems.
- (d) Local land use planning agencies.
- (e) Environmental users of groundwater.
- (f) Surface water users, if there is a hydrologic connection between surface and groundwater bodies.
- (g) The federal government, including, but not limited to, the military and managers of federal lands.
- (h) California Native American tribes.
- (i) Disadvantaged communities, including, but not limited to, those served by private domestic wells or small community water systems.
- (j) Entities listed in Section 10927 that are monitoring and reporting groundwater elevations in all or a part of a groundwater basin managed by the groundwater sustainability agency.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10723.4.** The groundwater sustainability agency shall establish and maintain a list of persons interested in receiving notices regarding plan preparation, meeting announcements, and availability of draft plans, maps, and other relevant documents. Any person may request, in writing, to be placed on the list of interested persons.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10723.6.** (a) A combination of local agencies may form a groundwater sustainability agency by using any of the following methods:

- (1) A joint powers agreement.
- (2) A memorandum of agreement or other legal agreement.
- (b) A water corporation regulated by the Public Utilities Commission or a mutual water company may participate in a groundwater sustainability agency through a memorandum of agreement or other legal agreement. The authority provided by this subdivision does not confer any additional powers to a nongovernmental entity.

*(Amended by Stats. 2015, Ch. 255, Sec. 7. Effective January 1, 2016.)*

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**§ 10723.8.** (a) Within 30 days of deciding to become or form a groundwater sustainability agency, the local agency or combination of local agencies shall inform the department of its decision and its intent to undertake sustainable groundwater management. The notification shall include the following information, as applicable:

(1) The service area boundaries, the boundaries of the basin or portion of the basin the agency intends to manage pursuant to this part, and the other agencies managing or proposing to manage groundwater within the basin.

(2) A copy of the resolution forming the new agency.

(3) A copy of any new bylaws, ordinances, or new authorities adopted by the local agency.

(4) A list of interested parties developed pursuant to Section 10723.2 and an explanation of how their interests will be considered in the development and operation of the groundwater sustainability agency and the development and implementation of the agency's sustainability plan.

(b) The department shall post all complete notices received under this section on its Internet Web site within 15 days of receipt.

(c) The decision to become a groundwater sustainability agency shall take effect 90 days after the department posts notice under subdivision (b) if no other local agency submits a notification under subdivision (a) of its intent to undertake groundwater management in all or a portion of the same area. If another notification is filed within the 90-day period, the decision shall not take effect unless the other notification is withdrawn or modified to eliminate any overlap in the areas proposed to be managed. The local agencies shall seek to reach agreement to allow prompt designation of a groundwater sustainability agency. If agreement is reached involving a material change from the information in the posted notice, a new notification shall be submitted under subdivision (a) and the department shall post notice under subdivision (b).

(d) Except as provided in subdivisions (e) and (f), after the decision to be a groundwater sustainability agency takes effect, the groundwater sustainability agency shall be presumed to be the exclusive groundwater sustainability agency within the area of the basin within the service area of the local agency that the local agency is managing as described in the notice.

(e) A groundwater sustainability agency may withdraw from managing a basin by notifying the department in writing of its intent to withdraw.

(f) This section does not preclude the board from taking an action pursuant to Section 10735.6.

*(Amended by Stats. 2015, Ch. 255, Sec. 8. Effective January 1, 2016.)*

**§ 10724.** (a) In the event that there is an area within a high- or medium-priority basin that is not within the management area of a groundwater sustainability

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agency, the county within which that unmanaged area lies will be presumed to be the groundwater sustainability agency for that area.

(b) A county described in subdivision (a) shall provide notification to the department pursuant to Section 10723.8 unless the county notifies the department that it will not be the groundwater sustainability agency for the area. Extractions of groundwater made on or after July 1, 2017, in that area shall be subject to reporting in accordance with Part 5.2 (commencing with Section 5200) of Division 2 if the county does either of the following:

(1) Notifies the department that it will not be the groundwater sustainability agency for an area.

(2) Fails to provide notification to the department pursuant to Section 10723.8 for an area on or before June 30, 2017.

*(Amended by Stats. 2015, Ch. 255, Sec. 9. Effective January 1, 2016.)*

## **CHAPTER 5. POWERS AND AUTHORITIES [10725. - 10726.9.]**

*(Chapter 5 added by Stats. 2014, Ch. 346, Sec. 3.)*

**§ 10725.** (a) A groundwater sustainability agency may exercise any of the powers described in this chapter in implementing this part, in addition to, and not as a limitation on, any existing authority, if the groundwater sustainability agency adopts and submits to the department a groundwater sustainability plan or prescribed alternative documentation in accordance with Section 10733.6.

(b) A groundwater sustainability agency has and may use the powers in this chapter to provide the maximum degree of local control and flexibility consistent with the sustainability goals of this part.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10725.2.** (a) A groundwater sustainability agency may perform any act necessary or proper to carry out the purposes of this part.

(b) A groundwater sustainability agency may adopt rules, regulations, ordinances, and resolutions for the purpose of this part, in compliance with any procedural requirements applicable to the adoption of a rule, regulation, ordinance, or resolution by the groundwater sustainability agency.

(c) In addition to any other applicable procedural requirements, the groundwater sustainability agency shall provide notice of the proposed adoption of the groundwater sustainability plan on its Internet Web site and provide for electronic notice to any person who requests electronic notification.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10725.4.** (a) A groundwater sustainability agency may conduct an investigation for the purposes of this part, including, but not limited to, investigations for the following:

(1) To determine the need for groundwater management.

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(2) To prepare and adopt a groundwater sustainability plan and implementing rules and regulations.

(3) To propose and update fees.

(4) To monitor compliance and enforcement.

(b) An investigation may include surface waters and surface water rights as well as groundwater and groundwater rights.

(c) In connection with an investigation, a groundwater sustainability agency may inspect the property or facilities of a person or entity to ascertain whether the purposes of this part are being met and compliance with this part. The local agency may conduct an inspection pursuant to this section upon obtaining any necessary consent or obtaining an inspection warrant pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10725.6.** A groundwater sustainability agency may require registration of a groundwater extraction facility within the management area of the groundwater sustainability agency.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10725.8.** (a) A groundwater sustainability agency may require through its groundwater sustainability plan that the use of every groundwater extraction facility within the management area of the groundwater sustainability agency be measured by a water-measuring device satisfactory to the groundwater sustainability agency.

(b) All costs associated with the purchase and installation of the water-measuring device shall be borne by the owner or operator of each groundwater extraction facility. The water-measuring devices shall be installed by the groundwater sustainability agency or, at the groundwater sustainability agency's option, by the owner or operator of the groundwater extraction facility. Water-measuring devices shall be calibrated on a reasonable schedule as may be determined by the groundwater sustainability agency.

(c) A groundwater sustainability agency may require, through its groundwater sustainability plan, that the owner or operator of a groundwater extraction facility within the groundwater sustainability agency file an annual statement with the groundwater sustainability agency setting forth the total extraction in acre-feet of groundwater from the facility during the previous water year.

(d) In addition to the measurement of groundwater extractions pursuant to subdivision (a), a groundwater sustainability agency may use any other reasonable method to determine groundwater extraction.

(e) This section does not apply to de minimis extractors.

*(Amended by Stats. 2015, Ch. 303, Sec. 551. Effective January 1, 2016.)*

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**§ 10726.** An entity within the area of a groundwater sustainability plan shall report the diversion of surface water to underground storage to the groundwater sustainability agency for the relevant portion of the basin.  
*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10726.2.** A groundwater sustainability agency may do the following:

(a) Acquire by grant, purchase, lease, gift, devise, contract, construction, or otherwise, and hold, use, enjoy, sell, let, and dispose of, real and personal property of every kind, including lands, water rights, structures, buildings, rights-of-way, easements, and privileges, and construct, maintain, alter, and operate any and all works or improvements, within or outside the agency, necessary or proper to carry out any of the purposes of this part.

(b) Appropriate and acquire surface water or groundwater and surface water or groundwater rights, import surface water or groundwater into the agency, and conserve and store within or outside the agency that water for any purpose necessary or proper to carry out the provisions of this part, including, but not limited to, the spreading, storing, retaining, or percolating into the soil of the waters for subsequent use or in a manner consistent with the provisions of Section 10727.2. As part of this authority, the agency shall not alter another person's or agency's existing groundwater conjunctive use or storage program except upon a finding that the conjunctive use or storage program interferes with implementation of the agency's groundwater sustainability plan.

(c) Provide for a program of voluntary fallowing of agricultural lands or validate an existing program.

(d) Perform any acts necessary or proper to enable the agency to purchase, transfer, deliver, or exchange water or water rights of any type with any person that may be necessary or proper to carry out any of the purposes of this part, including, but not limited to, providing surface water in exchange for a groundwater extractor's agreement to reduce or cease groundwater extractions. The agency shall not deliver retail water supplies within the service area of a public water system without either the consent of that system or authority under the agency's existing authorities.

(e) Transport, reclaim, purify, desalinate, treat, or otherwise manage and control polluted water, wastewater, or other waters for subsequent use in a manner that is necessary or proper to carry out the purposes of this part.

(f) Commence, maintain, intervene in, defend, compromise, and assume the cost and expenses of any and all actions and proceedings.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10726.4.** (a) A groundwater sustainability agency shall have the following additional authority and may regulate groundwater extraction using that authority:

(1) To impose spacing requirements on new groundwater well construction to minimize well interference and impose reasonable operating regulations on existing groundwater wells to minimize well interference, including requiring extractors to operate on a rotation basis.

(2) To control groundwater extractions by regulating, limiting, or suspending extractions from individual groundwater wells or extractions from groundwater wells in the aggregate, construction of new groundwater wells, enlargement of existing groundwater wells, or reactivation of abandoned groundwater wells, or otherwise establishing groundwater extraction allocations. Those actions shall be consistent with the applicable elements of the city or county general plan, unless there is insufficient sustainable yield in the basin to serve a land use designated in the city or county general plan. A limitation on extractions by a groundwater sustainability agency shall not be construed to be a final determination of rights to extract groundwater from the basin or any portion of the basin.

(3) To authorize temporary and permanent transfers of groundwater extraction allocations within the agency's boundaries, if the total quantity of groundwater extracted in any water year is consistent with the provisions of the groundwater sustainability plan. The transfer is subject to applicable city and county ordinances.

(4) To establish accounting rules to allow unused groundwater extraction allocations issued by the agency to be carried over from one year to another and voluntarily transferred, if the total quantity of groundwater extracted in any five-year period is consistent with the provisions of the groundwater sustainability plan.

(b) This section does not authorize a groundwater sustainability agency to issue permits for the construction, modification, or abandonment of groundwater wells, except as authorized by a county with authority to issue those permits. A groundwater sustainability agency may request of the county, and the county shall consider, that the county forward permit requests for the construction of new groundwater wells, the enlarging of existing groundwater wells, and the reactivation of abandoned groundwater wells to the groundwater sustainability agency before permit approval.

*(Amended (as added by Stats. 2014, Ch. 346) by Stats. 2014, Ch. 347, Sec. 12. Effective January 1, 2015.)*

**§ 10726.5.** In addition to any other authority granted to a groundwater sustainability agency by this part or other law, a groundwater sustainability agency may enter into written agreements and funding with a private party to assist in, or facilitate the implementation of, a groundwater sustainability plan or any elements of the plan.

*(Added by Stats. 2015, Ch. 666, Sec. 3. Effective January 1, 2016.)*

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**§ 10726.6.** (a) A groundwater sustainability agency that adopts a groundwater sustainability plan may file an action to determine the validity of the plan pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure no sooner than 180 days following the adoption of the plan.

(b) Subject to Sections 394 and 397 of the Code of Civil Procedure, the venue for an action pursuant to this section shall be the county in which the principal office of the groundwater management agency is located.

(c) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance or resolution imposing a new, or increasing an existing, fee imposed pursuant to Section 10730, 10730.2, or 10730.4 shall be commenced within 180 days following the adoption of the ordinance or resolution.

(d) Any person may pay a fee imposed pursuant to Section 10730, 10730.2, or 10730.4 under protest and bring an action against the governing body in the superior court to recover any money that the governing body refuses to refund. Payments made and actions brought under this section shall be made and brought in the manner provided for the payment of taxes under protest and actions for refund of that payment in Article 2 (commencing with Section 5140) of Chapter 5 of Part 9 of Division 1 of the Revenue and Taxation Code, as applicable.

(e) Except as otherwise provided in this section, actions by a groundwater sustainability agency are subject to judicial review pursuant to Section 1085 of the Code of Civil Procedure.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10726.8.** (a) This part is in addition to, and not a limitation on, the authority granted to a local agency under any other law. The local agency may use the local agency's authority under any other law to apply and enforce any requirements of this part, including, but not limited to, the collection of fees.

(b) Nothing in this part shall be construed as authorizing a local agency to make a binding determination of the water rights of any person or entity, or to impose fees or regulatory requirements on activities outside the boundaries of the local agency.

(c) Nothing in this part is a limitation on the authority of the board, the department, or the State Department of Public Health.

(d) Notwithstanding Section 6103 of the Government Code, a state or local agency that extracts groundwater shall be subject to a fee imposed under this part to the same extent as any nongovernmental entity.

(e) Except as provided in subdivision (d), this part does not authorize a local agency to impose any requirement on the state or any agency, department, or officer of the state. State agencies and departments shall work cooperatively with a local agency on a voluntary basis.

(f) Nothing in this chapter or a groundwater sustainability plan shall be interpreted as superseding the land use authority of cities and counties, including the city or county general plan, within the overlying basin.  
*(Amended by Stats. 2015, Ch. 255, Sec. 10. Effective January 1, 2016.)*

**§ 10726.9.** A groundwater sustainability plan shall take into account the most recent planning assumptions stated in local general plans of jurisdictions overlying the basin.  
*(Added by Stats. 2014, Ch. 347, Sec. 14. Effective January 1, 2015.)*

## **CHAPTER 6. GROUNDWATER SUSTAINABILITY PLANS [10727. - 10728.6.]**

*(Chapter 6 added by Stats. 2014, Ch. 346, Sec. 3.)*

**§ 10727.** (a) A groundwater sustainability plan shall be developed and implemented for each medium- or high-priority basin by a groundwater sustainability agency to meet the sustainability goal established pursuant to this part. The groundwater sustainability plan may incorporate, extend, or be based on a plan adopted pursuant to Part 2.75 (commencing with Section 10750).

(b) A groundwater sustainability plan may be any of the following:

(1) A single plan covering the entire basin developed and implemented by one groundwater sustainability agency.

(2) A single plan covering the entire basin developed and implemented by multiple groundwater sustainability agencies.

(3) Subject to Section 10727.6, multiple plans implemented by multiple groundwater sustainability agencies and coordinated pursuant to a single coordination agreement that covers the entire basin.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10727.2.** A groundwater sustainability plan shall include all of the following:

(a) A description of the physical setting and characteristics of the aquifer system underlying the basin that includes the following:

(1) Historical data, to the extent available.

(2) Groundwater levels, groundwater quality, subsidence, and groundwater-surface water interaction.

(3) A general discussion of historical and projected water demands and supplies.

(4) A map that details the area of the basin and the boundaries of the groundwater sustainability agencies that overlie the basin that have or are developing groundwater sustainability plans.

(5) A map identifying existing and potential recharge areas for the basin. The map or maps shall identify the existing recharge areas that substantially contribute to the replenishment of the groundwater basin. The map or maps shall be provided to the appropriate local planning agencies after adoption of the groundwater sustainability plan.

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(b) (1) Measurable objectives, as well as interim milestones in increments of five years, to achieve the sustainability goal in the basin within 20 years of the implementation of the plan.

(2) A description of how the plan helps meet each objective and how each objective is intended to achieve the sustainability goal for the basin for long-term beneficial uses of groundwater.

(3) (A) Notwithstanding paragraph (1), at the request of the groundwater sustainability agency, the department may grant an extension of up to 5 years beyond the 20-year sustainability timeframe upon a showing of good cause. The department may grant a second extension of up to five years upon a showing of good cause if the groundwater sustainability agency has begun implementation of the work plan described in clause (iii) of subparagraph (B).

(B) The department may grant an extension pursuant to this paragraph if the groundwater sustainability agency does all of the following:

(i) Demonstrates a need for an extension.

(ii) Has made progress toward meeting the sustainability goal as demonstrated by its progress at achieving the milestones identified in its groundwater sustainability plan.

(iii) Adopts a feasible work plan for meeting the sustainability goal during the extension period.

(4) The plan may, but is not required to, address undesirable results that occurred before, and have not been corrected by, January 1, 2015. Notwithstanding paragraphs (1) to (3), inclusive, a groundwater sustainability agency has discretion as to whether to set measurable objectives and the timeframes for achieving any objectives for undesirable results that occurred before, and have not been corrected by, January 1, 2015.

(c) A planning and implementation horizon.

(d) Components relating to the following, as applicable to the basin:

(1) The monitoring and management of groundwater levels within the basin.

(2) The monitoring and management of groundwater quality, groundwater quality degradation, inelastic land surface subsidence, and changes in surface flow and surface water quality that directly affect groundwater levels or quality or are caused by groundwater extraction in the basin.

(3) Mitigation of overdraft.

(4) How recharge areas identified in the plan substantially contribute to the replenishment of the basin.

(5) A description of surface water supply used or available for use for groundwater recharge or in-lieu use.

(e) A summary of the type of monitoring sites, type of measurements, and the frequency of monitoring for each location monitoring groundwater levels, groundwater quality, subsidence, streamflow, precipitation, evaporation, and

tidal influence. The plan shall include a summary of monitoring information such as well depth, screened intervals, and aquifer zones monitored, and a summary of the type of well relied on for the information, including public, irrigation, domestic, industrial, and monitoring wells.

(f) Monitoring protocols that are designed to detect changes in groundwater levels, groundwater quality, inelastic surface subsidence for basins for which subsidence has been identified as a potential problem, and flow and quality of surface water that directly affect groundwater levels or quality or are caused by groundwater extraction in the basin. The monitoring protocols shall be designed to generate information that promotes efficient and effective groundwater management.

(g) A description of the consideration given to the applicable county and city general plans and a description of the various adopted water resources-related plans and programs within the basin and an assessment of how the groundwater sustainability plan may affect those plans.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10727.4.** In addition to the requirements of Section 10727.2, a groundwater sustainability plan shall include, where appropriate and in collaboration with the appropriate local agencies, all of the following:

(a) Control of saline water intrusion.

(b) Wellhead protection areas and recharge areas.

(c) Migration of contaminated groundwater.

(d) A well abandonment and well destruction program.

(e) Replenishment of groundwater extractions.

(f) Activities implementing, opportunities for, and removing impediments to, conjunctive use or underground storage.

(g) Well construction policies.

(h) Measures addressing groundwater contamination cleanup, groundwater recharge, in-lieu use, diversions to storage, conservation, water recycling, conveyance, and extraction projects.

(i) Efficient water management practices, as defined in Section 10902, for the delivery of water and water conservation methods to improve the efficiency of water use.

(j) Efforts to develop relationships with state and federal regulatory agencies.

(k) Processes to review land use plans and efforts to coordinate with land use planning agencies to assess activities that potentially create risks to groundwater quality or quantity.

(l) Impacts on groundwater dependent ecosystems.

*(Amended by Stats. 2015, Ch. 666, Sec. 4. Effective January 1, 2016.)*

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**§ 10727.6.** Groundwater sustainability agencies intending to develop and implement multiple groundwater sustainability plans pursuant to paragraph (3) of subdivision (b) of Section 10727 shall coordinate with other agencies preparing a groundwater sustainability plan within the basin to ensure that the plans utilize the same data and methodologies for the following assumptions in developing the plan:

- (a) Groundwater elevation data.
- (b) Groundwater extraction data.
- (c) Surface water supply.
- (d) Total water use.
- (e) Change in groundwater storage.
- (f) Water budget.
- (g) Sustainable yield.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10727.8.** (a) Prior to initiating the development of a groundwater sustainability plan, the groundwater sustainability agency shall make available to the public and the department a written statement describing the manner in which interested parties may participate in the development and implementation of the groundwater sustainability plan. The groundwater sustainability agency shall provide the written statement to the legislative body of any city, county, or city and county located within the geographic area to be covered by the plan. The groundwater sustainability agency may appoint and consult with an advisory committee consisting of interested parties for the purposes of developing and implementing a groundwater sustainability plan. The groundwater sustainability agency shall encourage the active involvement of diverse social, cultural, and economic elements of the population within the groundwater basin prior to and during the development and implementation of the groundwater sustainability plan. If the geographic area to be covered by the plan includes a public water system regulated by the Public Utilities Commission, the groundwater sustainability agency shall provide the written statement to the commission.

(b) For purposes of this section, interested parties include entities listed in Section 10927 that are monitoring and reporting groundwater elevations in all or a part of a groundwater basin managed by the groundwater sustainability agency.

*(Amended by Stats. 2015, Ch. 666, Sec. 5. Effective January 1, 2016.)*

**§ 10728.** On the April 1 following the adoption of a groundwater sustainability plan and annually thereafter, a groundwater sustainability agency shall submit a report to the department containing the following information about the basin managed in the groundwater sustainability plan:

- (a) Groundwater elevation data.

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(b) Annual aggregated data identifying groundwater extraction for the preceding water year.

(c) Surface water supply used for or available for use for groundwater recharge or in-lieu use.

(d) Total water use.

(e) Change in groundwater storage.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10728.2.** A groundwater sustainability agency shall periodically evaluate its groundwater sustainability plan, assess changing conditions in the basin that may warrant modification of the plan or management objectives, and may adjust components in the plan. An evaluation of the plan shall focus on determining whether the actions under the plan are meeting the plan's management objectives and whether those objectives are meeting the sustainability goal in the basin.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10728.4.** A groundwater sustainability agency may adopt or amend a groundwater sustainability plan after a public hearing, held at least 90 days after providing notice to a city or county within the area of the proposed plan or amendment. The groundwater sustainability agency shall review and consider comments from any city or county that receives notice pursuant to this section and shall consult with a city or county that requests consultation within 30 days of receipt of the notice. Nothing in this section is intended to preclude an agency and a city or county from otherwise consulting or commenting regarding the adoption or amendment of a plan.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

**§ 10728.6.** Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the preparation and adoption of plans pursuant to this chapter. Nothing in this part shall be interpreted as exempting from Division 13 (commencing with Section 21000) of the Public Resources Code a project that would implement actions taken pursuant to a plan adopted pursuant to this chapter.

*(Added by Stats. 2014, Ch. 346, Sec. 3. Effective January 1, 2015.)*

## **CHAPTER 7. TECHNICAL ASSISTANCE [10729. - 10729.2.]**

*(Chapter 7 added by Stats. 2014, Ch. 347, Sec. 15.)*

**§ 10729.** (a) The department or a groundwater sustainability agency may provide technical assistance to entities that extract or use groundwater to promote water conservation and protect groundwater resources.

(b) The department may provide technical assistance to any groundwater sustainability agency in response to that agency's request for assistance in the

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development and implementation of a groundwater sustainability plan. The department shall use its best efforts to provide the requested assistance.

(c) The department shall prepare and publish a report by December 31, 2016, on its Internet Web site that presents the department's best estimate, based on available information, of water available for replenishment of groundwater in the state.

(d) (1) By January 1, 2017, the department shall publish on its Internet Web site best management practices for the sustainable management of groundwater.

(2) The department shall develop the best management practices through a public process involving one public meeting conducted at a location in northern California, one public meeting conducted at a location in the San Joaquin Valley, one public meeting conducted at a location in southern California, and one public meeting of the California Water Commission. *(Added by Stats. 2014, Ch. 347, Sec. 15. Effective January 1, 2015.)*

**§ 10729.2.** With the exception of regulations required by Sections 10722.2 and 10733.2, a guideline, criterion, bulletin, or other technical or procedural analysis or guidance prepared by the department as required by this part is not subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). *(Added by Stats. 2015, Ch. 255, Sec. 11. Effective January 1, 2016.)*

## **CHAPTER 8. FINANCIAL AUTHORITY [10730. - 10731.]**

*(Chapter 8 added by Stats. 2014, Ch. 347, Sec. 16.)*

**§ 10730.** (a) A groundwater sustainability agency may impose fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity, to fund the costs of a groundwater sustainability program, including, but not limited to, preparation, adoption, and amendment of a groundwater sustainability plan, and investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve. A groundwater sustainability agency shall not impose a fee pursuant to this subdivision on a de minimis extractor unless the agency has regulated the users pursuant to this part.

(b) (1) Prior to imposing or increasing a fee, a groundwater sustainability agency shall hold at least one public meeting, at which oral or written presentations may be made as part of the meeting.

(2) Notice of the time and place of the meeting shall include a general explanation of the matter to be considered and a statement that the data required by this section is available. The notice shall be provided by publication pursuant to Section 6066 of the Government Code, by posting notice on the Internet Web site of the groundwater sustainability agency, and by mail to any

interested party who files a written request with the agency for mailed notice of the meeting on new or increased fees. A written request for mailed notices shall be valid for one year from the date that the request is made and may be renewed by making a written request on or before April 1 of each year.

(3) At least 20 days prior to the meeting, the groundwater sustainability agency shall make available to the public data upon which the proposed fee is based.

(c) Any action by a groundwater sustainability agency to impose or increase a fee shall be taken only by ordinance or resolution.

(d) (1) As an alternative method for the collection of fees imposed pursuant to this section, a groundwater sustainability agency may adopt a resolution requesting collection of the fees in the same manner as ordinary municipal ad valorem taxes.

(2) A resolution described in paragraph (1) shall be adopted and furnished to the county auditor-controller and board of supervisors on or before August 1 of each year that the alternative collection of the fees is being requested. The resolution shall include a list of parcels and the amount to be collected for each parcel.

(e) The power granted by this section is in addition to any powers a groundwater sustainability agency has under any other law.  
*(Amended by Stats. 2015, Ch. 667, Sec. 2. Effective January 1, 2016.)*

**§ 10730.2.** (a) A groundwater sustainability agency that adopts a groundwater sustainability plan pursuant to this part may impose fees on the extraction of groundwater from the basin to fund costs of groundwater management, including, but not limited to, the costs of the following:

(1) Administration, operation, and maintenance, including a prudent reserve.

(2) Acquisition of lands or other property, facilities, and services.

(3) Supply, production, treatment, or distribution of water.

(4) Other activities necessary or convenient to implement the plan.

(b) Until a groundwater sustainability plan is adopted pursuant to this part, a local agency may impose fees in accordance with the procedures provided in this section for the purposes of Part 2.75 (commencing with Section 10750) as long as a groundwater management plan adopted before January 1, 2015, is in effect.

(c) Fees imposed pursuant to this section shall be adopted in accordance with subdivisions (a) and (b) of Section 6 of Article XIII D of the California Constitution.

(d) Fees imposed pursuant to this section may include fixed fees and fees charged on a volumetric basis, including, but not limited to, fees that increase based on the quantity of groundwater produced annually, the year in which the

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production of groundwater commenced from a groundwater extraction facility, and impacts to the basin.

(e) The power granted by this section is in addition to any powers a groundwater sustainability agency has under any other law.

*(Amended by Stats. 2015, Ch. 255, Sec. 12. Effective January 1, 2016.)*

**§ 10730.4.** A groundwater sustainability agency may fund activities pursuant to Part 2.75 (commencing with Section 10750) and may impose fees pursuant to Section 10730.2 to fund activities undertaken by the agency pursuant to Part 2.75 (commencing with Section 10750).

*(Added by Stats. 2014, Ch. 347, Sec. 16. Effective January 1, 2015.)*

**§ 10730.6.** (a) A groundwater fee levied pursuant to this chapter shall be due and payable to the groundwater sustainability agency by each owner or operator on a day established by the groundwater sustainability agency.

(b) If an owner or operator knowingly fails to pay a groundwater fee within 30 days of it becoming due, the owner or operator shall be liable to the groundwater sustainability agency for interest at the rate of 1 percent per month on the delinquent amount of the groundwater fee and a 10-percent penalty.

(c) The groundwater sustainability agency may bring a suit in the court having jurisdiction against any owner or operator of a groundwater extraction facility within the area covered by the plan for the collection of any delinquent groundwater fees, interest, or penalties imposed under this chapter. If the groundwater sustainability agency seeks an attachment against the property of any named defendant in the suit, the groundwater sustainability agency shall not be required to furnish a bond or other undertaking as provided in Title 6.5 (commencing with Section 481.010) of Part 2 of the Code of Civil Procedure.

(d) In the alternative to bringing a suit pursuant to subdivision (c), a groundwater sustainability agency may collect any delinquent groundwater charge and any civil penalties and interest on the delinquent groundwater charge pursuant to the laws applicable to the local agency or, if a joint powers authority, to the entity designated pursuant to Section 6509 of the Government Code. The collection shall be in the same manner as it would be applicable to the collection of delinquent assessments, water charges, or tolls.

(e) As an additional remedy, a groundwater sustainability agency, after a public hearing, may order an owner or operator to cease extraction of groundwater until all delinquent fees are paid. The groundwater sustainability agency shall give notice to the owner or operator by certified mail not less than 15 days in advance of the public hearing.

(f) The remedies specified in this section for collecting and enforcing fees are cumulative and may be pursued alternatively or may be used consecutively as determined by the governing body.

*(Added by Stats. 2014, Ch. 347, Sec. 16. Effective January 1, 2015.)*

**§ 10730.8.** (a) Nothing in this chapter shall affect or interfere with the authority of a groundwater sustainability agency to levy and collect taxes, assessments, charges, and tolls as otherwise provided by law.

(b) Personal information included in a report or record pursuant to this chapter has the same protection from disclosure as is provided for information concerning utility customers of local agencies pursuant to Section 6254.16 of the Government Code.

*(Added by Stats. 2014, Ch. 347, Sec. 16. Effective January 1, 2015.)*

**§ 10731.** (a) Following an investigation pursuant to Section 10725.4, the governing body may make a determination fixing the amount of groundwater production from the groundwater extraction facility at an amount not to exceed the maximum production capacity of the facility for purposes of levying a groundwater charge. If a water-measuring device is permanently attached to the groundwater extraction facility, the record of production as disclosed by the water-measuring device shall be presumed to be accurate unless the contrary is established by the groundwater sustainability agency after investigation.

(b) After the governing body makes a determination fixing the amount of groundwater production pursuant to subdivision (a), a written notice of the determination shall be mailed to the owner or operator of the groundwater extraction facility at the address as shown by the groundwater sustainability agency's records. A determination made by the governing body shall be conclusive on the owner or operator and the groundwater charges, based on the determination together with any interest and penalties, shall be payable immediately unless within 20 days after the mailing of the notice the owner or operator files with the governing body a written protest setting forth the ground for protesting the amount of production or the groundwater charges, interest, and penalties. If a protest is filed pursuant to this subdivision, the governing body shall hold a hearing to determine the total amount of the groundwater production and the groundwater charges, interest, and penalties. Notice of the hearing shall be mailed to each protestant at least 20 days before the date fixed for the hearing. Notice of the determination of the governing body hearing shall be mailed to each protestant. The owner or operator shall have 20 days from the date of mailing of the determination to pay the groundwater charges, interest, and penalties determined by the governing body.

*(Added by Stats. 2014, Ch. 347, Sec. 16. Effective January 1, 2015.)*

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**CHAPTER 9. GROUNDWATER SUSTAINABILITY AGENCY ENFORCEMENT POWERS**  
**[10732. - 10732.2.]**

*(Chapter 9 added by Stats. 2014, Ch. 347, Sec. 17.)*

**§ 10732.** (a) (1) A person who extracts groundwater in excess of the amount that person is authorized to extract under a rule, regulation, ordinance, or resolution adopted pursuant to Section 10725.2, shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per acre-foot extracted in excess of the amount that person is authorized to extract. Liability under this subdivision is in addition to any liability imposed under paragraph (2) and any fee imposed for the extraction.

(2) A person who violates any rule, regulation, ordinance, or resolution adopted pursuant to Section 10725.2 shall be liable for a civil penalty not to exceed one thousand dollars (\$1,000) plus one hundred dollars (\$100) for each additional day on which the violation continues if the person fails to comply within 30 days after the local agency has notified the person of the violation.

(b) (1) A groundwater sustainability agency may bring an action in the superior court to determine whether a violation occurred and to impose a civil penalty described in subdivision (a).

(2) A groundwater sustainability agency may administratively impose a civil penalty described in subdivision (a) after providing notice and an opportunity for a hearing.

(3) In determining the amount of the penalty, the superior court or the groundwater sustainability agency shall take into consideration all relevant circumstances, including, but not limited to, the nature and persistence of the violation, the extent of the harm caused by the violation, the length of time over which the violation occurs, and any corrective action taken by the violator.

(c) A penalty imposed pursuant to this section shall be paid to the groundwater sustainability agency and shall be expended solely for purposes of this part.

(d) Penalties imposed pursuant to this section are in addition to any civil penalty or criminal fine under any other law.

*(Added by Stats. 2014, Ch. 347, Sec. 17. Effective January 1, 2015.)*

**§ 10732.2.** If a groundwater sustainability agency finds that a state entity is not working cooperatively regarding implementation of a groundwater sustainability plan, the groundwater sustainability agency may file notice with the board regarding its finding. The board shall notice proceedings to investigate the finding of the groundwater sustainability agency. If the board determines that the failure of the state entity to work cooperatively regarding implementation of a groundwater sustainability plan compromises the ability of the groundwater sustainability agency to implement the plan in a manner that

will likely achieve the sustainability goal, the board may direct the state entity to cooperate in the implementation of the groundwater sustainability plan unless the state entity indicates its authority for not complying with a groundwater sustainability plan in the same manner as subdivision (f) of Section 10735.8. *(Added by Stats. 2015, Ch. 666, Sec. 6. Effective January 1, 2016.)*

## **CHAPTER 10. STATE EVALUATION AND ASSESSMENT [10733. - 10733.8.]**

*(Chapter 10 added by Stats. 2014, Ch. 347, Sec. 18.)*

**§ 10733.** (a) The department shall periodically review the groundwater sustainability plans developed by groundwater sustainability agencies pursuant to this part to evaluate whether a plan conforms with Sections 10727.2 and 10727.4 and is likely to achieve the sustainability goal for the basin covered by the groundwater sustainability plan.

(b) If a groundwater sustainability agency develops multiple groundwater sustainability plans for a basin, the department shall evaluate whether the plans conform with Sections 10727.2, 10727.4, and 10727.6 and are together likely to achieve the sustainability goal for the basin covered by the groundwater sustainability plans.

(c) The department shall evaluate whether a groundwater sustainability plan adversely affects the ability of an adjacent basin to implement their groundwater sustainability plan or impedes achievement of sustainability goals in an adjacent basin.

*(Added by Stats. 2014, Ch. 347, Sec. 18. Effective January 1, 2015.)*

**§ 10733.2.** (a) (1) By June 1, 2016, the department shall adopt regulations for evaluating groundwater sustainability plans, the implementation of groundwater sustainability plans, and coordination agreements pursuant to this chapter.

(2) The regulations shall identify the necessary plan components specified in Sections 10727.2, 10727.4, and 10727.6 and other information that will assist local agencies in developing and implementing groundwater sustainability plans and coordination agreements.

(b) (1) The department may update the regulations, including to incorporate the best management practices identified pursuant to Section 10729.

(2) The regulations adopted pursuant to paragraph (1) of subdivision (a) shall identify appropriate methodologies and assumptions for baseline conditions concerning hydrology, water demand, regulatory restrictions that affect the availability of surface water, and unreliability of, or reductions in, surface water deliveries to the agency or water users in the basin, and the impact of those conditions on achieving sustainability. The baseline for measuring unreliability and reductions shall include the historic average

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reliability and deliveries of surface water to the agency or water users in the basin.

(c) By June 1, 2016, the department shall adopt regulations for evaluating alternatives submitted pursuant to Section 10733.6.

(d) The department shall adopt the regulations, including any amendments thereto, authorized by this section as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding the Administrative Procedure Act, emergency regulations adopted by the department pursuant to this section shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the department.

(e) Before adopting the regulations pursuant to this section, the department shall conduct three public meetings to consider public comments. The department shall publish the draft regulations on its Internet Web site at least 30 days before the public meetings. One meeting shall be conducted at a location in northern California, one meeting shall be conducted at a location in the central valley of California, and one meeting shall be conducted at a location in southern California.

*(Amended by Stats. 2015, Ch. 255, Sec. 13. Effective January 1, 2016.)*

**§ 10733.4.** (a) Upon adoption of a groundwater sustainability plan, a groundwater sustainability agency shall submit the groundwater sustainability plan to the department for review pursuant to this chapter.

(b) If groundwater sustainability agencies develop multiple groundwater sustainability plans for a basin, the submission required by subdivision (a) shall not occur until the entire basin is covered by groundwater sustainability plans. When the entire basin is covered by groundwater sustainability plans, the groundwater sustainability agencies shall jointly submit to the department all of the following:

(1) The groundwater sustainability plans.

(2) An explanation of how the groundwater sustainability plans implemented together satisfy Sections 10727.2, 10727.4, and 10727.6 for the entire basin.

(3) A copy of the coordination agreement between the groundwater sustainability agencies to ensure the coordinated implementation of the groundwater sustainability plans for the entire basin.

(c) Upon receipt of a groundwater sustainability plan, the department shall post the plan on the department's Internet Web site and provide 60 days for persons to submit comments to the department about the plan.

(d) The department shall evaluate the groundwater sustainability plan within two years of its submission by a groundwater sustainability agency and issue an assessment of the plan. The assessment may include recommended corrective actions to address any deficiencies identified by the department.

(e) Nothing in this section shall be construed to prohibit a groundwater sustainability agency from implementing a groundwater sustainability plan prior to evaluation and assessment of the groundwater sustainability plan by the department.

*(Amended by Stats. 2015, Ch. 666, Sec. 7. Effective January 1, 2016.)*

**§ 10733.6.** (a) If a local agency believes that an alternative described in subdivision (b) satisfies the objectives of this part, the local agency may submit the alternative to the department for evaluation and assessment of whether the alternative satisfies the objectives of this part for the basin.

(b) An alternative is any of the following:

(1) A plan developed pursuant to Part 2.75 (commencing with Section 10750) or other law authorizing groundwater management.

(2) Management pursuant to an adjudication action.

(3) An analysis of basin conditions that demonstrates that the basin has operated within its sustainable yield over a period of at least 10 years. The submission of an alternative described by this paragraph shall include a report prepared by a registered professional engineer or geologist who is licensed by the state and submitted under that engineer's or geologist's seal.

(c) A local agency shall submit an alternative pursuant to this section no later than January 1, 2017, and every five years thereafter.

(d) The assessment required by subdivision (a) shall include an assessment of whether the alternative is within a basin that is in compliance with Part 2.11 (commencing with Section 10920). If the alternative is within a basin that is not in compliance with Part 2.11 (commencing with Section 10920), the department shall find the alternative does not satisfy the objectives of this part.

*(Added by Stats. 2014, Ch. 347, Sec. 18. Effective January 1, 2015.)*

**§ 10733.8.** At least every five years after initial submission of a plan pursuant to Section 10733.4, the department shall review any available groundwater sustainability plan or alternative submitted in accordance with Section 10733.6, and the implementation of the corresponding groundwater sustainability program for consistency with this part, including achieving the sustainability goal. The department shall issue an assessment for each basin for which a plan or alternative has been submitted in accordance with this chapter, with an emphasis on assessing progress in achieving the sustainability goal within the basin. The assessment may include recommended corrective actions to address any deficiencies identified by the department.

*(Added by Stats. 2014, Ch. 347, Sec. 18. Effective January 1, 2015.)*

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**CHAPTER 11. STATE INTERVENTION [10735. - 10736.6.]**

*(Chapter 11 added by Stats. 2014, Ch. 347, Sec. 19.)*

**§ 10735.** As used in this chapter, the following terms have the following meanings:

(a) “Condition of long-term overdraft” means the condition of a groundwater basin where the average annual amount of water extracted for a long-term period, generally 10 years or more, exceeds the long-term average annual supply of water to the basin, plus any temporary surplus. Overdraft during a period of drought is not sufficient to establish a condition of long-term overdraft if extractions and recharge are managed as necessary to ensure that reductions in groundwater levels or storage during a period of drought are offset by increases in groundwater levels or storage during other periods.

(b) “Person” means any person, firm, association, organization, partnership, business, trust, corporation, limited liability company, or public agency, including any city, county, city and county, district, joint powers authority, state, or any agency or department of those entities. “Person” includes, to the extent authorized by federal or tribal law and subject to the limitations described in subdivisions (c) and (d) of Section 10720.3, the United States, a department, agency or instrumentality of the federal government, an Indian tribe, an authorized Indian tribal organization, or interstate body.

(c) “Probationary basin” means a basin for which the board has issued a determination under Section 10735.2.

(d) “Significant depletions of interconnected surface waters” means reductions in flow or levels of surface water that is hydrologically connected to the basin such that the reduced surface water flow or levels have a significant and unreasonable adverse impact on beneficial uses of the surface water.

*(Added by Stats. 2014, Ch. 347, Sec. 19. Effective January 1, 2015.)*

**§ 10735.2.** (a) The board, after notice and a public hearing, may designate a high- or medium-priority basin as a probationary basin, if the board finds one or more of the following applies to the basin:

(1) After June 30, 2017, none of the following have occurred:

(A) A local agency has decided to become a groundwater sustainability agency that intends to develop a groundwater sustainability plan for the entire basin.

(B) A collection of local agencies has formed a groundwater sustainability agency or prepared agreements to develop one or more groundwater sustainability plans that will collectively serve as a groundwater sustainability plan for the entire basin.

(C) A local agency has submitted an alternative that has been approved or is pending approval pursuant to Section 10733.6. If the department disapproves

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an alternative pursuant to Section 10733.6, the board shall not act under this paragraph until at least 180 days after the department disapproved the alternative.

(2) The basin is subject to paragraph (1) of subdivision (a) of Section 10720.7, and after January 31, 2020, none of the following have occurred:

(A) A groundwater sustainability agency has adopted a groundwater sustainability plan for the entire basin.

(B) A collection of local agencies has adopted groundwater sustainability plans that collectively serve as a groundwater sustainability plan for the entire basin.

(C) The department has approved an alternative pursuant to Section 10733.6.

(3) The basin is subject to paragraph (1) of subdivision (a) of Section 10720.7 and after January 31, 2020, the department, in consultation with the board, determines that a groundwater sustainability plan is inadequate or that the groundwater sustainability program is not being implemented in a manner that will likely achieve the sustainability goal.

(4) The basin is subject to paragraph (2) of subdivision (a) of Section 10720.7, and after January 31, 2022, none of the following have occurred:

(A) A groundwater sustainability agency has adopted a groundwater sustainability plan for the entire basin.

(B) A collection of local agencies has adopted groundwater sustainability plans that collectively serve as a groundwater sustainability plan for the entire basin.

(C) The department has approved an alternative pursuant to Section 10733.6.

(5) The basin is subject to paragraph (2) of subdivision (a) of Section 10720.7, and either of the following have occurred:

(A) After January 31, 2022, both of the following have occurred:

(i) The department, in consultation with the board, determines that a groundwater sustainability plan is inadequate or that the groundwater sustainability plan is not being implemented in a manner that will likely achieve the sustainability goal.

(ii) The board determines that the basin is in a condition of long-term overdraft.

(B) After January 31, 2025, both of the following have occurred:

(i) The department, in consultation with the board, determines that a groundwater sustainability plan is inadequate or that the groundwater sustainability plan is not being implemented in a manner that will likely achieve the sustainability goal.

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(ii) The board determines that the basin is in a condition where groundwater extractions result in significant depletions of interconnected surface waters.

(b) In making the findings associated with paragraph (3) or (5) of subdivision (a), the department and board may rely on periodic assessments the department has prepared pursuant to Chapter 10 (commencing with Section 10733). The board may request that the department conduct additional assessments utilizing the regulations developed pursuant to Chapter 10 (commencing with Section 10733) and make determinations pursuant to this section. The board shall post on its Internet Web site and provide at least 30 days for the public to comment on any determinations provided by the department pursuant to this subdivision.

(c) (1) The determination may exclude a class or category of extractions from the requirement for reporting pursuant to Part 5.2 (commencing with Section 5200) of Division 2 if those extractions are subject to a local plan or program that adequately manages groundwater within the portion of the basin to which that plan or program applies, or if those extractions are likely to have a minimal impact on basin withdrawals.

(2) The determination may require reporting of a class or category of extractions that would otherwise be exempt from reporting pursuant to paragraph (1) of subdivision (c) of Section 5202 if those extractions are likely to have a substantial impact on basin withdrawals or requiring reporting of those extractions is reasonably necessary to obtain information for purposes of this chapter.

(3) The determination may establish requirements for information required to be included in reports of groundwater extraction, for installation of measuring devices, or for use of a methodology, measuring device, or both, pursuant to Part 5.2 (commencing with Section 5200) of Division 2.

(4) The determination may modify the water year or reporting date for a report of groundwater extraction pursuant to Section 5202.

(d) If the board finds that litigation challenging the formation of a groundwater sustainability agency prevented its formation before July 1, 2017, pursuant to paragraph (1) of subdivision (a) or prevented a groundwater sustainability program from being implemented in a manner likely to achieve the sustainability goal pursuant to paragraph (2), (3), (4), or (5) of subdivision (a), the board shall not designate a basin as a probationary basin for a period of time equal to the delay caused by the litigation.

(e) The board shall exclude from probationary status any portion of a basin for which a groundwater sustainability agency demonstrates compliance with the sustainability goal.

*(Amended by Stats. 2015, Ch. 255, Sec. 15. Effective January 1, 2016.)*

**§ 10735.4.** (a) If the board designates a basin as a probationary basin pursuant to paragraph (1), (2), or (4) of subdivision (a) of Section 10735.2, a local agency or groundwater sustainability agency shall have 180 days to remedy the deficiency. The board may appoint a mediator or other facilitator, after consultation with affected local agencies, to assist in resolving disputes, and identifying and implementing actions that will remedy the deficiency.

(b) After the 180-day period provided by subdivision (a), the board may provide additional time to remedy the deficiency if it finds that a local agency is making substantial progress toward remedying the deficiency.

(c) The board may develop an interim plan pursuant to Section 10735.8 for the probationary basin at the end of the period provided by subdivision (a) or any extension provided pursuant to subdivision (b), if the board, in consultation with the department, determines that a local agency has not remedied the deficiency that resulted in designating the basin as a probationary basin. *(Amended by Stats. 2015, Ch. 255, Sec. 16. Effective January 1, 2016.)*

**§ 10735.6.** (a) If the board designates a basin as a probationary basin pursuant to paragraph (3) or (5) of subdivision (a) of Section 10735.2, the board shall identify the specific deficiencies and identify potential actions to address the deficiencies. The board may request the department to provide local agencies, within 90 days of the designation of a probationary basin, with technical recommendations to remedy the deficiencies.

(b) The board may develop an interim plan pursuant to Section 10735.8 for the probationary basin one year after the designation of the basin pursuant to paragraph (3) or (5) of subdivision (a) of Section 10735.2, if the board, in consultation with the department, determines that a local agency has not remedied the deficiency that resulted in designating the basin a probationary basin.

*(Amended by Stats. 2015, Ch. 255, Sec. 17. Effective January 1, 2016.)*

**§ 10735.8.** (a) The board, after notice and a public hearing, may adopt an interim plan for a probationary basin.

(b) The interim plan shall include all of the following:

(1) Identification of the actions that are necessary to correct a condition of long-term overdraft or a condition where groundwater extractions result in significant depletions of interconnected surface waters, including recommendations for appropriate action by any person.

(2) A time schedule for the actions to be taken.

(3) A description of the monitoring to be undertaken to determine effectiveness of the plan.

(c) The interim plan may include the following:

(1) Restrictions on groundwater extraction.

(2) A physical solution.

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(3) Principles and guidelines for the administration of rights to surface waters that are connected to the basin.

(d) Except as provided in subdivision (e), the interim plan shall be consistent with water right priorities, subject to Section 2 of Article X of the California Constitution.

(e) The board shall include in its interim plan a groundwater sustainability plan, or any element of a plan, that the board finds complies with the sustainability goal for that portion of the basin or would help meet the sustainability goal for the basin. Where, in the judgment of the board, an adjudication action can be relied on as part of the interim plan, either throughout the basin or in an area within the basin, the board may rely on, or incorporate elements of, that adjudication into the interim plan adopted by the board.

(f) In carrying out activities that may affect the probationary basin, state entities shall comply with an interim plan adopted by the board pursuant to this section unless otherwise directed or authorized by statute and the state entity shall indicate to the board in writing the authority for not complying with the interim plan.

(g) (1) After the board adopts an interim plan under this section, the board shall determine if a groundwater sustainability plan or an adjudication action is adequate to eliminate the condition of long-term overdraft or condition where groundwater extractions result in significant depletions of interconnected surface waters, upon petition of either of the following:

(A) A groundwater sustainability agency that has adopted a groundwater sustainability plan for the probationary basin or a portion thereof.

(B) A person authorized to file the petition by a judicial order or decree entered in an adjudication action in the probationary basin.

(2) The board shall act on a petition filed pursuant to paragraph (1) within 90 days after the petition is complete. If the board, in consultation with the department, determines that the groundwater sustainability plan or adjudication action is adequate, the board shall rescind the interim plan adopted by the board for the probationary basin, except as provided in paragraphs (3) and (4).

(3) Upon request of the petitioner, the board may amend an interim plan adopted under this section to eliminate portions of the interim plan, while allowing other portions of the interim plan to continue in effect.

(4) The board may decline to rescind an interim plan adopted pursuant to this section if the board determines that the petitioner has not provided adequate assurances that the groundwater sustainability plan or judicial order or decree will be implemented.

(5) This subdivision is not a limitation on the authority of the board to stay its proceedings under this section or to rescind or amend an interim plan

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adopted pursuant to this section based on the progress made by a groundwater sustainability agency or in an adjudication action, even if the board cannot make a determination of adequacy in accordance with paragraph (1).

(h) Before January 1, 2025, the state board shall not establish an interim plan under this section to remedy a condition where the groundwater extractions result in significant depletions of interconnected surface waters.

(i) The board's authority to adopt an interim plan under this section does not alter the law establishing water rights priorities or any other authority of the board.

*(Amended (as added by Stats. 2014, Ch. 347) by Stats. 2014, Ch. 348, Sec. 2. Effective January 1, 2015.)*

**§ 10736.** (a) The board shall adopt or amend a determination or interim plan under Section 10735.2 or 10735.8 in accordance with procedures for quasi-legislative action.

(b) The board shall provide notice of a hearing described in subdivision (a) of Section 10735.2 or subdivision (a) of Section 10735.8 as follows:

(1) At least 90 days before the hearing, the board shall publish notice of the hearing on its Internet Web site.

(2) At least 90 days before the hearing, the board shall notify the department and each city, county, or city and county in which any part of the basin is situated.

(3) (A) For the purposes of this paragraph, the terms "board-designated local area" and "local agency" have the same meaning as defined in Section 5009.

(B) At least 60 days before the hearing, the board shall mail or send by electronic mail notice to all persons known to the board who extract or who propose to extract water from the basin, or who have made written or electronic mail requests to the board for special notice of hearing pursuant to this part. If any portion of the basin is within a board-designated local area, the records made available to the board by the local agency in accordance with paragraph (4) of subdivision (d) of Section 5009 shall include the names and addresses of persons and entities known to the local agency who extract water from the basin, and the board shall mail or send by electronic mail notice to those persons.

(c) The board shall provide notice of proceedings to amend or repeal a determination or plan under Section 10735.2 or 10735.8 as appropriate to the proceedings, taking into account the nature of the proposed revision and the person likely to be affected.

(d) (1) Except as provided in paragraphs (2) and (3), Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 2 of Title 2 of the

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Government Code does not apply to any action authorized pursuant to Section 10735.2 or 10735.8.

(2) The board may adopt a regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 2 of Title 2 of the Government Code setting procedures for adopting a determination or plan.

(3) The board may adopt a regulation applying or interpreting this part pursuant to Section 1530 if the board determines that the emergency regulation is reasonably necessary for the allocation, administration, or collection of fees authorized pursuant to Section 1529.5.

*(Added by Stats. 2014, Ch. 347, Sec. 19. Effective January 1, 2015.)*

**§ 10736.2.** Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to any action or failure to act by the board under this chapter, other than the adoption or amendment of an interim plan pursuant to Section 10735.8.

*(Added by Stats. 2014, Ch. 347, Sec. 19. Effective January 1, 2015.)*

**§ 10736.4.** The extraction or use of water extracted in violation of an interim plan under this part shall not be relied upon as a basis for establishing the extraction or use of water to support a claim in an action or proceeding for determination of water rights.

*(Added by Stats. 2014, Ch. 347, Sec. 19. Effective January 1, 2015.)*

**§ 10736.6.** (a) The board may order a person that extracts or uses water from a basin that is subject to an investigation or proceeding under this chapter to prepare and submit to the board any technical or monitoring program reports related to that person's or entity's extraction or use of water as the board may specify. The costs incurred by the person in the preparation of those reports shall bear a reasonable relationship to the need for the report and the benefit to be obtained from the report. If the preparation of individual reports would result in a duplication of effort, or if the reports are necessary to evaluate the cumulative effect of several diversions or uses of water, the board may order any person subject to this subdivision to pay a reasonable share of the cost of preparing reports.

(b) (1) An order issued pursuant to this section shall be served by personal service or registered mail on the party to submit technical or monitoring program reports or to pay a share of the costs of preparing reports. Unless the board issues the order after a hearing, the order shall inform the party of the right to request a hearing within 30 days after the party has been served. If the party does not request a hearing within that 30-day period, the order shall take effect as issued. If the party requests a hearing within that 30-day period, the board may adopt a decision and order after conducting a hearing.

(2) In lieu of adopting an order directed at named persons in accordance with the procedures specified in paragraph (1), the board may adopt a regulation applicable to a category or class of persons in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 2 of Title 2 of the Government Code.

(c) Upon application of a person or upon its own motion, the board may review and revise an order issued or regulation adopted pursuant to this section in accordance with the procedures set forth in subdivision (b).

(d) In conducting an investigation or proceeding pursuant to this part, the board may inspect the property or facilities of a person to ascertain whether the purposes of this part are being met and to ascertain compliance with this part. The board may obtain an inspection warrant pursuant to the procedures set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure for the purposes of an inspection pursuant to this subdivision.  
*(Added by Stats. 2014, Ch. 347, Sec. 19. Effective January 1, 2015.)*

## **CHAPTER 12. DETERMINATION OF RIGHTS TO GROUNDWATER [10737. - 10737.8.]**

*(Chapter 12 added by Stats. 2015, Ch. 676, Sec. 5.)*

**§ 10737.** Except as provided in this chapter, an adjudication action to determine rights to groundwater in a basin shall be conducted in accordance with the Code of Civil Procedure, including pursuant to Chapter 7 (commencing with Section 830) of Title 10 of Part 2 of that code.

*(Added by Stats. 2015, Ch. 676, Sec. 5. Effective January 1, 2016.)*

**§ 10737.2.** In an adjudication action for a basin required to have a groundwater sustainability plan under this part, the court shall manage the proceedings in a manner that minimizes interference with the timely completion and implementation of a groundwater sustainability plan, avoids redundancy and unnecessary costs in the development of technical information and a physical solution, and is consistent with the attainment of sustainable groundwater management within the timeframes established by this part.

*(Added by Stats. 2015, Ch. 676, Sec. 5. Effective January 1, 2016.)*

**§ 10737.4.** (a) Chapter 11 (commencing with Section 10735) shall not apply to a judgment approved by the court pursuant to Section 850 of the Code of Civil Procedure if both of the following apply:

(1) A local agency or a party directed by the court to file the submission submits the judgment to the department for evaluation and assessment pursuant to paragraph (2) of subdivision (b) of Section 10733.6.

(2) The department determines that the judgment satisfies the objectives of this part for the basin.

(b) A party or group of parties proposing a stipulated judgment pursuant to subdivision (b) of Section 850 of the Code of Civil Procedure may submit the proposed stipulated judgment to the department for evaluation and assessment pursuant to paragraph (2) of subdivision (b) of Section 10733.6.

(c) Notwithstanding subdivision (c) of Section 10733.6, a judgment or proposed stipulated judgment pursuant to this section may be submitted to the department after January 1, 2017.

(d) A determination of the department on a submission pursuant to this section is subject to judicial review pursuant to Section 1085 of the Code of Civil Procedure. Venue shall be in the court with jurisdiction over the adjudication action and the case shall be coordinated with the adjudication action.

*(Added by Stats. 2015, Ch. 676, Sec. 5. Effective January 1, 2016.)*

**§ 10737.6.** If the department determines that a judgment satisfies the objectives of this part in accordance with paragraph (2) of subdivision (a) of Section 10737.4, the department shall submit to the court the assessments and any recommended corrective actions that the department issues pursuant to Section 10733.8. The court, after notice and, if necessary, an evidentiary hearing, shall determine whether to amend the judgment pursuant to Section 852 of the Code of Civil Procedure to adopt the department's recommended corrective actions.

*(Added by Stats. 2015, Ch. 676, Sec. 5. Effective January 1, 2016.)*

**§ 10737.8.** In addition to making any findings required by subdivision (a) of Section 850 of the Code of Civil Procedure or any other law, the court shall not approve entry of judgment in an adjudication action for a basin required to have a groundwater sustainability plan under this part unless the court finds that the judgment will not substantially impair the ability of a groundwater sustainability agency, the board, or the department to comply with this part and to achieve sustainable groundwater management.

*(Added by Stats. 2015, Ch. 676, Sec. 5. Effective January 1, 2016.)*

## **PART 2.75. GROUNDWATER MANAGEMENT [10750. - 10755.4.]**

*(Part 2.75 repealed and added by Stats. 1992, Ch. 947, Sec. 2.)*

### **CHAPTER 1. GENERAL PROVISIONS [10750. - 10750.10.]**

*(Chapter 1 added by Stats. 1992, Ch. 947, Sec. 2.)*

**§ 10750.** (a) The Legislature finds and declares that groundwater is a valuable natural resource in California, and should be managed to ensure both its safe production and its quality. It is the intent of the Legislature to encourage local agencies to work cooperatively to manage groundwater resources within their jurisdictions.

(b) The Legislature also finds and declares that additional study of groundwater resources is necessary to better understand how to manage groundwater effectively to ensure the safe production, quality, and proper storage of groundwater in this state.

*(Amended by Stats. 2000, Ch. 708, Sec. 1. Effective January 1, 2001.)*

**§ 10750.1.** (a) Beginning January 1, 2015, a new plan shall not be adopted and an existing plan shall not be renewed pursuant to this part, except as provided in subdivision (b). A plan adopted before January 1, 2015, shall remain in effect until a groundwater sustainability plan is adopted pursuant to Part 2.74 (commencing with Section 10720).

(b) This section does not apply to a low- or very low priority basin as categorized for the purposes of Part 2.74 (commencing with Section 10720).

(c) This section does not apply to a plan submitted as an alternative pursuant to Section 10733.6, unless the department has not determined that the alternative satisfies the objectives of Part 2.74 (commencing with Section 10720) on or before January 31, 2020, or the department later determines that the plan does not satisfy the objectives of that part.

*(Added by Stats. 2014, Ch. 346, Sec. 4. Effective January 1, 2015.)*

**§ 10750.2.** (a) Subject to subdivision (b), this part applies to all groundwater basins in the state.

(b) This part does not apply to any portion of a groundwater basin that is subject to groundwater management by a local agency or a watermaster pursuant to other provisions of law or a court order, judgment, or decree, unless the local agency or watermaster agrees to the application of this part.

*(Added by Stats. 1992, Ch. 947, Sec. 2. Effective January 1, 1993.)*

**§ 10750.4.** Nothing in this part requires a local agency overlying a groundwater basin to adopt or implement a groundwater management plan or groundwater management program pursuant to this part.

*(Added by Stats. 1992, Ch. 947, Sec. 2. Effective January 1, 1993.)*

**§ 10750.6.** Nothing in this part affects the authority of a local agency or a watermaster to manage groundwater pursuant to other provisions of law or a court order, judgment, or decree.

*(Added by Stats. 1992, Ch. 947, Sec. 2. Effective January 1, 1993.)*

**§ 10750.7.** (a) A local agency may not manage groundwater pursuant to this part within the service area of another local agency, a water corporation regulated by the Public Utilities Commission, or a mutual water company without the agreement of that other entity.

(b) This section applies only to groundwater basins that are not critically overdrafted.

*(Added by Stats. 1992, Ch. 947, Sec. 2. Effective January 1, 1993.)*

**§ 10750.8.** (a) A local agency may not manage groundwater pursuant to this part within the service area of another local agency without the agreement of that other entity.

(b) This section applies only to groundwater basins that are critically overdrafted.

*(Added by Stats. 1992, Ch. 947, Sec. 2. Effective January 1, 1993.)*

**§ 10750.9.** (a) A local agency that commences procedures, prior to January 1, 1993, to adopt an ordinance or resolution to establish a program for the management of groundwater pursuant to Part 2.75 (commencing with Section 10750), as added by Chapter 903 of the Statutes of 1991, may proceed to adopt the ordinance or resolution pursuant to Part 2.75, and the completion of those procedures is deemed to meet the requirements of this part.

(b) A local agency that has adopted an ordinance or resolution pursuant to Part 2.75 (commencing with Section 10750), as added by Chapter 903 of the Statutes of 1991, may amend its groundwater management program by ordinance or resolution of the governing body of the local agency to include any of the plan components set forth in Section 10753.7.

*(Amended by Stats. 1993, Ch. 320, Sec. 1. Effective January 1, 1994.)*

**§ 10750.10.** This part is in addition to, and not a limitation on, the authority granted to a local agency pursuant to other provisions of law.

*(Added by Stats. 1992, Ch. 947, Sec. 2. Effective January 1, 1993.)*

## **CHAPTER 2. DEFINITIONS [10752. - 10752.]**

*(Chapter 2 added by Stats. 1992, Ch. 947, Sec. 2.)*

**§ 10752.** Unless the context otherwise requires, the following definitions govern the construction of this part:

(a) “Groundwater” means all water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water that flows in known and definite channels.

(b) “Groundwater basin” means any basin or subbasin identified in the department’s Bulletin No. 118, dated September 1975, and any amendments to that bulletin, but does not include a basin in which the average well yield, excluding domestic wells that supply water to a single-unit dwelling, is less than 100 gallons per minute.

(c) “Groundwater extraction facility” means a device or method for the extraction of groundwater within a groundwater basin.

(d) “Groundwater management plan” or “plan” means a document that describes the activities intended to be included in a groundwater management program.

(e) “Groundwater management program” or “program” means a coordinated and ongoing activity undertaken for the benefit of a groundwater basin, or a portion of a groundwater basin, pursuant to a groundwater management plan adopted pursuant to this part.

(f) “Groundwater recharge” means the augmentation of groundwater, by natural or artificial means, with surface water or recycled water.

(g) “Local agency” means a local public agency that provides water service to all or a portion of its service area, and includes a joint powers authority formed by local public agencies that provide water service.

(h) “Person” has the same meaning as defined in Section 19.

(i) “Recharge area” means the area that supplies water to an aquifer in a groundwater basin and includes multiple wellhead protection areas.

(j) “Watermaster” means a watermaster appointed by a court or pursuant to other provisions of law.

(k) “Wellhead protection area” means the surface and subsurface area surrounding a water well or well field that supplies a public water system through which contaminants are reasonably likely to migrate toward the water well or well field.

*(Amended by Stats. 2011, Ch. 572, Sec. 1. Effective January 1, 2012.)*

### **CHAPTER 3. GROUNDWATER MANAGEMENT PLANS [10753. - 10753.11.]**

*(Chapter 3 added by Stats. 1992, Ch. 947, Sec. 2.)*

**§ 10753.** (a) Any local agency, whose service area includes a groundwater basin, or a portion of a groundwater basin, that is not subject to groundwater management pursuant to other provisions of law or a court order, judgment, or decree, may, by ordinance, or by resolution if the local agency is not authorized to act by ordinance, adopt and implement a groundwater management plan pursuant to this part within all or a portion of its service area.

(b) Notwithstanding subdivision (a), a local public agency, other than an agency defined in subdivision (g) of Section 10752, that provides flood control, groundwater management, or groundwater replenishment, or a local agency formed pursuant to this code for the principal purpose of providing water service that has not yet provided that service, may exercise the authority of this part within a groundwater basin that is located within its boundaries within areas that are either of the following:

(1) Not served by a local agency.

(2) Served by a local agency whose governing body, by a majority vote, declines to exercise the authority of this part and enters into an agreement with the local public agency pursuant to Section 10750.7 or 10750.8.

(c) Except as provided in subdivision (b), this chapter does not authorize a local agency to manage groundwater planning within the service area of another local agency.

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(d) Except as otherwise provided in this part, the process for developing and adopting a revised groundwater management plan shall be the same as the process for developing and adopting a new groundwater management plan. *(Amended by Stats. 2012, Ch. 162, Sec. 185. Effective January 1, 2013.)*

**§ 10753.1.** Nothing in this part, or in any groundwater management plan adopted pursuant to this part, affects surface water rights or the procedures under common law or local groundwater authority, or any provision of law other than this part that determines or grants surface water rights. *(Added by Stats. 2002, Ch. 603, Sec. 2. Effective January 1, 2003.)*

**§ 10753.2.** (a) Prior to adopting a resolution of intention to draft a groundwater management plan, a local agency shall hold a hearing, after publication of notice pursuant to Section 6066 of the Government Code, on whether or not to adopt a resolution of intention to draft a groundwater management plan pursuant to this part for the purposes of implementing the plan and establishing a groundwater management program.

(b) At the conclusion of the hearing, the local agency may draft a resolution of intention to adopt a groundwater management plan pursuant to this part for the purposes of implementing the plan and establishing a groundwater management program.

(c) The local agency shall provide to the department a copy of a resolution of intention adopted pursuant to this section within 30 days of the date of adoption. The local agency shall also provide to the department contact information for the person in charge of drafting the groundwater management plan.

(d) The department shall post on its Internet Web site information it possesses regarding groundwater management plans being prepared or adopted pursuant to this part, including information provided by local agencies identified pursuant to this section, and monitoring entities identified pursuant to Sections 10928 and 10930.

*(Amended by Stats. 2011, Ch. 572, Sec. 3. Effective January 1, 2012.)*

**§ 10753.3.** (a) After the conclusion of the hearing, and if the local agency adopts a resolution of intention, the local agency shall publish the resolution of intention in the same manner that notice for the hearing held under Section 10753.2 was published.

(b) Upon written request, the local agency shall provide any interested person with a copy of the resolution of intention.

*(Added by Stats. 1992, Ch. 947, Sec. 2. Effective January 1, 1993.)*

**§ 10753.4.** (a) The local agency shall prepare a groundwater management plan within two years of the date of the adoption of the resolution of intention.

(1) If the plan is not adopted within two years, the resolution of intention expires, and a plan shall not be adopted except pursuant to a new resolution of intention adopted in accordance with this chapter.

(2) If the plan is not adopted within two years, and the local agency was operating under a previously adopted groundwater management plan, that previous plan shall remain in effect.

(b) For the purposes of carrying out this part, the local agency shall make available to the public and the department a written statement describing the manner in which interested parties may participate in developing the groundwater management plan. The local agency may appoint, and consult with, a technical advisory committee consisting of interested parties for the purposes of carrying out this part.

(c) The local agency shall establish and maintain a list of persons interested in receiving notices regarding plan preparation, meeting announcements, and availability of draft plans, maps, and other relevant documents. Any person may request, in writing, to be placed on the list of interested persons.

*(Amended by Stats. 2011, Ch. 572, Sec. 4. Effective January 1, 2012.)*

**§ 10753.5.** (a) After a groundwater management plan is prepared, the local agency shall hold a second hearing to determine whether to adopt the plan. Notice of the hearing shall be given pursuant to Section 6066 of the Government Code. Notice shall also be provided to the department and to all persons on the list established and maintained pursuant to subdivision (c) of Section 10753.4. The notice shall include a summary of the plan and shall state that copies of the plan and any maps that may be prepared pursuant to this part may be obtained for the cost of reproduction at the office of the local agency.

(b) At the second hearing, the local agency shall consider protests to the adoption of the plan. At any time prior to the conclusion of the second hearing, any landowner within the local agency may file a written protest or withdraw a protest previously filed.

*(Amended by Stats. 2011, Ch. 572, Sec. 5. Effective January 1, 2012.)*

**§ 10753.6.** (a) A written protest filed by a landowner shall include the landowner's signature and a description of the land owned sufficient to identify the land. A public agency owning land is deemed to be a landowner for the purpose of making a written protest.

(b) The secretary of the local agency shall compare the names and property descriptions on the protest against the property ownership records of the county assessors.

(c) (1) A majority protest shall be determined to exist if the governing board of the local agency finds that the protests filed and not withdrawn prior to the conclusion of the second hearing represent more than 50 percent of the

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assessed value of the land within the local agency subject to groundwater management pursuant to this part.

(2) If the local agency determines that a majority protest exists, the groundwater plan may not be adopted and the local agency shall not consider adopting a plan for the area proposed to be included within the program for a period of one year after the date of the second hearing.

(3) If a majority protest has not been filed, the local agency, within 35 days after the conclusion of the second hearing, may adopt the groundwater management plan.

*(Added by Stats. 1992, Ch. 947, Sec. 2. Effective January 1, 1993.)*

**§ 10753.7.** (a) For the purposes of qualifying as a groundwater management plan under this section, a plan shall contain the components that are set forth in this section. In addition to the requirements of a specific funding program, a local agency seeking state funds administered by the department for groundwater projects or groundwater quality projects, including projects that are part of an integrated regional water management program or plan, and excluding programs that are funded under Part 2.78 (commencing with Section 10795), shall do all of the following:

(1) Prepare and implement a groundwater management plan that includes basin management objectives for the groundwater basin that is subject to the plan. The plan shall include components relating to the monitoring and management of groundwater levels within the groundwater basin, groundwater quality degradation, inelastic land surface subsidence, changes in surface flow and surface water quality that directly affect groundwater levels or quality or are caused by groundwater pumping in the basin, and a description of how recharge areas identified in the plan substantially contribute to the replenishment of the groundwater basin.

(2) For purposes of implementing paragraph (1), the local agency shall prepare a plan to involve other agencies that enables the local agency to work cooperatively with other public entities whose service area or boundary overlies the groundwater basin.

(3) For purposes of implementing paragraph (1), the local agency shall prepare a map that details the area of the groundwater basin, as defined in the department's Bulletin No. 118, and the area of the local agency, that will be subject to the plan, as well as the boundaries of other local agencies that overlie the basin in which the agency is developing a groundwater management plan.

(4) (A) Commencing January 1, 2013, for purposes of implementing paragraph (1), the groundwater management plan shall include a map identifying the recharge areas for the groundwater basin.

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(B) The local agency shall provide the map required pursuant to subparagraph (A) to the appropriate local planning agencies after adoption of the groundwater management plan.

(C) Upon submitting a map pursuant to subparagraph (B), the local agency shall notify the department and all persons on the list established and maintained pursuant to subdivision (c) of Section 10753.4.

(D) For purposes of this paragraph, “map identifying the recharge areas” means a map that identifies, or maps that identify, the current recharge areas that substantially contribute to the replenishment of the groundwater basin.

(5) The local agency shall adopt monitoring protocols that are designed to detect changes in groundwater levels, groundwater quality, inelastic surface subsidence for basins for which subsidence has been identified as a potential problem, and flow and quality of surface water that directly affect groundwater levels or quality or are caused by groundwater pumping in the basin. The monitoring protocols shall be designed to generate information that promotes efficient and effective groundwater management.

(6) Local agencies that are located in areas outside the groundwater basins delineated on the latest edition of the department’s groundwater basin and subbasin map shall prepare groundwater management plans incorporating the components in this subdivision, and shall use geologic and hydrologic principles appropriate to those areas.

(b) (1) (A) A local agency may receive state funds administered by the department for groundwater projects or for other projects that directly affect groundwater levels or quality if it prepares and implements, participates in, or consents to be subject to, a groundwater management plan, a basinwide management plan, or other integrated regional water management program or plan that meets, or is in the process of meeting, the requirements of subdivision (a). A local agency with an existing groundwater management plan that meets the requirements of subdivision (a), or a local agency that completes an update of its plan to meet the requirements of subdivision (a) within one year of applying for funds, shall be given priority consideration for state funds administered by the department over local agencies that are in the process of developing a groundwater management plan. The department shall withhold funds from the project until the update of the groundwater management plan is complete.

(B) Notwithstanding subparagraph (A), a local agency that manages groundwater under any other provision of existing law that meets the requirements of subdivision (a), or that completes an update of its plan to meet the requirements of subdivision (a) within one year of applying for funding, shall be eligible for funding administered by the department. The department shall withhold funds from a project until the update of the groundwater management plan is complete.

(C) Notwithstanding subparagraph (A), a local agency that conforms to the requirements of an adjudication of water rights in the groundwater basin is in compliance with subdivision (a). For purposes of this subparagraph, an “adjudication” includes an adjudication under Section 2101, an administrative adjudication, and an adjudication in state or federal court.

(D) Subparagraphs (A) and (B) do not apply to proposals for funding under Part 2.78 (commencing with Section 10795), or to funds authorized or appropriated prior to September 1, 2002.

(E) A local agency may request state funds to map groundwater recharge areas pursuant to paragraph (4) of subdivision (a) to the extent that the request for state funds is consistent with eligibility requirements that are applicable to the use of the requested funds.

(2) Upon the adoption of a groundwater management plan in accordance with this part, the local agency shall submit a copy of the plan to the department, in an electronic format, if practicable, approved by the department. The department shall make available to the public copies of the plan received pursuant to this part.

*(Amended by Stats. 2011, Ch. 572, Sec. 6. Effective January 1, 2012.)*

**§ 10753.8.** A groundwater management plan may include components relating to all of the following:

- (a) The control of saline water intrusion.
- (b) Identification and management of wellhead protection areas and recharge areas.
- (c) Regulation of the migration of contaminated groundwater.
- (d) The administration of a well abandonment and well destruction program.
- (e) Mitigation of conditions of overdraft.
- (f) Replenishment of groundwater extracted by water producers.
- (g) Monitoring of groundwater levels and storage.
- (h) Facilitating conjunctive use operations.
- (i) Identification of well construction policies.
- (j) The construction and operation by the local agency of groundwater contamination cleanup, recharge, storage, conservation, water recycling, and extraction projects.
- (k) The development of relationships with state and federal regulatory agencies.
- (l) The review of land use plans and coordination with land use planning agencies to assess activities which create a reasonable risk of groundwater contamination.

*(Added by renumbering Section 10753.7 by Stats. 2002, Ch. 603, Sec. 4. Effective January 1, 2003.)*

**§ 10753.9.** (a) A local agency shall adopt rules and regulations to implement and enforce a groundwater management plan adopted pursuant to this part.

(b) Nothing in this part shall be construed as authorizing the local agency to make a binding determination of the water rights of any person or entity.

(c) Nothing in this part shall be construed as authorizing the local agency to limit or suspend extractions unless the local agency has determined through study and investigation that groundwater replenishment programs or other alternative sources of water supply have proved insufficient or infeasible to lessen the demand for groundwater.

*(Added by renumbering Section 10753.8 by Stats. 2002, Ch. 603, Sec. 6. Effective January 1, 2003.)*

**§ 10753.10.** In adopting rules and regulations pursuant to Section 10753.9, the local agency shall consider the potential impact of those rules and regulations on business activities, including agricultural operations, and to the extent practicable and consistent with the protection of the groundwater resources, minimize any adverse impacts on those business activities.

*(Added by renumbering Section 10753.9 by Stats. 2002, Ch. 603, Sec. 7. Effective January 1, 2003.)*

**§ 10753.11.** A plan shall not be considered invalid, and the local agency shall not be required to recirculate the plan for public comment or to delay implementation of the plan, if the local agency substantially complies with the public notice provisions of this chapter.

*(Added by Stats. 2011, Ch. 572, Sec. 7. Effective January 1, 2012.)*

#### **CHAPTER 4. FINANCES [10754. - 10754.3.]**

*(Chapter 4 added by Stats. 1992, Ch. 947, Sec. 2.)*

**§ 10754.** For purposes of groundwater management, a local agency that adopts a groundwater management plan pursuant to this part has the authority of a water replenishment district pursuant to Part 4 (commencing with Section 60220) of Division 18 and may fix and collect fees and assessments for groundwater management in accordance with Part 6 (commencing with Section 60300) of Division 18.

*(Repealed and added by Stats. 1992, Ch. 947, Sec. 2. Effective January 1, 1993.)*

**§ 10754.2.** (a) Subject to Section 10754.3, except as specified in subdivision (b), a local agency that adopts a groundwater management plan pursuant to this part, may impose equitable annual fees and assessments for groundwater management based on the amount of groundwater extracted from the groundwater basin within the area included in the groundwater management plan to pay for costs incurred by the local agency for groundwater management, including, but not limited to, the costs associated with the acquisition of replenishment water, administrative and operating costs, and costs of

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construction of capital facilities necessary to implement the groundwater management plan.

(b) The local agency may not impose fees or assessments on the extraction and replacement of groundwater pursuant to a groundwater remediation program required by other provisions of law or a groundwater storage contract with the local agency.

*(Amended by Stats. 1993, Ch. 320, Sec. 4. Effective January 1, 1994.)*

**§ 10754.3.** Before a local agency may levy a water management assessment pursuant to Section 10754.2 or otherwise fix and collect fees for the replenishment or extraction of groundwater pursuant to this part, the local agency shall hold an election on the proposition of whether or not the local agency shall be authorized to levy a groundwater management assessment or fix and collect fees for the replenishment or extraction of groundwater. The local agency shall be so authorized if a majority of the votes cast at the election is in favor of the proposition. The election shall be conducted in the manner prescribed by the laws applicable to the local agency or, if there are no laws so applicable, then as prescribed by laws relating to local elections. The election shall be conducted only within the portion of the jurisdiction of the local agency subject to groundwater management pursuant to this part.

*(Added by Stats. 1992, Ch. 947, Sec. 2. Effective January 1, 1993.)*

## **CHAPTER 5. MISCELLANEOUS [10755. - 10755.4.]**

*(Chapter 5 added by Stats. 1992, Ch. 947, Sec. 2.)*

**§ 10755.** (a) If a local agency annexes land subject to a groundwater management plan adopted pursuant to this part, the local agency annexing the land shall comply with the groundwater management plan for the annexed property.

(b) If a local agency subject to a groundwater management plan adopted pursuant to this part annexes land not subject to a groundwater management plan adopted pursuant to this part at the time of annexation, the annexed territory shall be subject to the groundwater management plan of the local agency annexing the land.

*(Repealed and added by Stats. 1992, Ch. 947, Sec. 2. Effective January 1, 1993.)*

**§ 10755.2.** (a) It is the intent of the Legislature to encourage local agencies, within the same groundwater basin, that are authorized to adopt groundwater management plans pursuant to this part, to adopt and implement a coordinated groundwater management plan.

(b) For the purpose of adopting and implementing a coordinated groundwater management program pursuant to this part, a local agency may enter into a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code with public

agencies, or a memorandum of understanding with public or private entities providing water service.

(c) A local agency may enter into agreements with public entities or private parties for the purpose of implementing a coordinated groundwater management plan.

*(Amended by Stats. 1993, Ch. 320, Sec. 5. Effective January 1, 1994.)*

**§ 10755.3.** Local agencies within the same groundwater basin that conduct groundwater management programs within that basin pursuant to this part, and cities and counties that either manage groundwater pursuant to this part or have ordinances relating to groundwater within that basin, shall, at least annually, meet to coordinate those programs.

*(Amended by Stats. 1995, Ch. 833, Sec. 2. Effective January 1, 1996.)*

**§ 10755.4.** Except in those groundwater basins that are subject to critical conditions of groundwater overdraft, as identified in the department's Bulletin 118-80, revised on December 24, 1982, the requirements of a groundwater management plan that is implemented pursuant to this part do not apply to the extraction of groundwater by means of a groundwater extraction facility that is used to provide water for domestic purposes to a single-unit residence and, if applicable, any dwelling unit authorized to be constructed pursuant to Section 65852.1 or 65852.2 of the Government Code.

*(Added by Stats. 1992, Ch. 947, Sec. 2. Effective January 1, 1993.)*

## **PART 2.76. GROUNDWATER QUALITY MONITORING [10780. - 10783.]**

*(Part 2.76 added by Stats. 2001, Ch. 522, Sec. 2.)*

**§ 10780.** This part shall be known and may be cited as the Groundwater Quality Monitoring Act of 2001.

*(Added by Stats. 2001, Ch. 522, Sec. 2. Effective January 1, 2002.)*

**§ 10781.** In order to improve comprehensive groundwater monitoring and increase the availability to the public of information about groundwater contamination, the state board, in consultation with other responsible agencies, as specified in this section, shall do all of the following:

(a) Integrate existing monitoring programs and design new program elements as necessary to establish a comprehensive monitoring program capable of assessing each groundwater basin in the state through direct and other statistically reliable sampling approaches. The interagency task force established pursuant to subdivision (b) shall determine the constituents to be included in the monitoring program. In designing the comprehensive monitoring program, the state board, among other things, shall integrate projects established in response to the Supplemental Report of the 1999 Budget Act, strive to take advantage of and incorporate existing data whenever possible, and prioritize groundwater basins that supply drinking water.

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- (b) (1) Create an interagency task force for all of the following purposes:
- (A) Identifying actions necessary to establish the monitoring program.
  - (B) Identifying measures to increase coordination among state and federal agencies that collect information regarding groundwater contamination in the state.
  - (C) Designing a database capable of supporting the monitoring program that is compatible with the state board's geotracker database.
  - (D) Assessing the scope and nature of necessary monitoring enhancements.
  - (E) Identifying the cost of any recommended measures.
  - (F) Identifying the means by which to make monitoring information available to the public.
- (2) The interagency task force shall consist of a representative of each of the following entities:
- (A) The state board.
  - (B) The department.
  - (C) The State Department of Health Services.
  - (D) The Department of Pesticide Regulation.
  - (E) The Department of Toxic Substances Control.
  - (F) The Department of Food and Agriculture.
- (c) Convene an advisory committee to the interagency task force, with a membership that includes all of the following:
- (1) Two representatives of appropriate federal agencies, if those agencies wish to participate.
  - (2) Two representatives of public water systems, one of which shall be a representative of a retail water supplier.
  - (3) Two representatives of environmental organizations.
  - (4) Two representatives of the business community.
  - (5) One representative of a local agency that is currently implementing a plan pursuant to Part 2.75 (commencing with Section 10750).
  - (6) Two representatives of agriculture.
  - (7) Two representatives from groundwater management entities.
- (d) (1) The members of the advisory committee may receive a per diem allowance for each day's attendance at a meeting of the advisory committee.
- (2) The members of the advisory committee may be reimbursed for actual and necessary travel expenses incurred in connection with their official duties. *(Added by Stats. 2001, Ch. 522, Sec. 2. Effective January 1, 2002.)*

**§ 10782.** (a) On or before June 1, 2009, the state board shall do both of the following:

(1) Identify and recommend to the Legislature funding options to extend, until January 1, 2024, the comprehensive monitoring program established in accordance with Section 10781.

(2) Make recommendations to enhance the public accessibility of information on groundwater conditions.

(b) On or before January 1, 2012, the state board, in consultation with the State Department of Public Health, the Department of Water Resources, the Department of Pesticide Regulation, the Office of Environmental Health Hazard Assessment, and any other agencies as appropriate, shall submit to the Legislature a report that does all of the following:

(1) Identifies communities that rely on contaminated groundwater as a primary source of drinking water.

(2) Identifies in the groundwater sources for the communities described in paragraph (1) the principal contaminants and other constituents of concern, as identified by the state board, affecting that groundwater and contamination levels.

(3) Identifies potential solutions and funding sources to clean up or treat groundwater or to provide alternative water supplies to ensure the provision of safe drinking water to communities identified in paragraph (1).

(c) The state board shall provide an opportunity for public comment on the report required pursuant to subdivision (b), prior to finalizing the report and submitting it to the Legislature.

*(Added by Stats. 2008, Ch. 670, Sec. 1. Effective January 1, 2009.)*

**§ 10782.3.** The state board shall use existing resources to carry out this part, and the operation of the program set forth in this part shall not supplant the operation of any other program required to be undertaken by the state board.

*(Added by Stats. 2001, Ch. 522, Sec. 2. Effective January 1, 2002.)*

**§ 10783.** (a) The Legislature finds and declares that protecting the state's groundwater for beneficial use, particularly sources and potential sources of drinking water, is of paramount concern.

(b) The Legislature further finds and declares that strategic, scientifically based groundwater monitoring of the state's oil and gas fields is critical to allaying the public's concerns regarding well stimulation treatments of oil and gas wells.

(c) On or before July 1, 2015, in order to assess the potential effects of well stimulation treatments, as defined in Article 3 (commencing with Section 3150) of Chapter 1 of Division 3 of the Public Resources Code, on the state's groundwater resources in a systematic way, the state board shall develop model groundwater monitoring criteria, to be implemented either on a well-by-well basis for a well subject to well stimulation treatment or on a regional scale. The model criteria shall address a range of spatial sampling scales from methods for

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conducting appropriate monitoring on individual oil and gas wells subject to a well stimulation treatment, to methods for conducting a regional groundwater monitoring program. The state board shall take into consideration the recommendations received pursuant to subdivision (d) and shall include in the model criteria, at a minimum, the components identified in subdivision (f). The state board shall prioritize monitoring of groundwater that is or has the potential to be a source of drinking water, but shall protect all waters designated for any beneficial use.

(d) The state board, in consultation with the Department of Conservation, Division of Oil, Gas, and Geothermal Resources, shall seek the advice of experts on the design of the model groundwater monitoring criteria. The experts shall assess and make recommendations to the state board on the model criteria. These recommendations shall prioritize implementation of regional groundwater monitoring programs statewide, as warranted, based upon the prevalence of well stimulation treatments of oil and gas wells and groundwater suitable as a source of drinking water.

(e) The state board shall also seek the advice of stakeholders representing the diverse interests of the oil- and gas-producing areas of the state. The stakeholders shall include the oil and gas industry, agriculture, environmental justice, and local government, among others, with regional representation commensurate with the intensity of oil and gas development in that area. The stakeholders shall also make recommendations to the state board regarding the development and implementation of groundwater monitoring criteria, including priority locations for implementation.

(f) The scope and nature of the model groundwater monitoring criteria shall include the determination of all of the following:

(1) An assessment of the areas to conduct groundwater quality monitoring and their appropriate boundaries.

(2) A list of the constituents to measure and assess water quality.

(3) The location, depth, and number of monitoring wells necessary to detect groundwater contamination at spatial scales ranging from an individual oil and gas well to a regional groundwater basin including one or more oil and gas fields.

(4) The frequency and duration of the monitoring.

(5) A threshold criteria indicating a transition from well-by-well monitoring to a regional monitoring program.

(6) Data collection and reporting protocols.

(7) Public access to the collected data under paragraph (6).

(g) Factors to consider in addressing subdivision (f) shall include, but are not limited to, all of the following:

(1) The existing quality and existing and potential use of the groundwater.

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(2) Groundwater that is not a source of drinking water consistent with the United States Environmental Protection Agency's definition of an Underground Source of Drinking Water as containing less than 10,000 milligrams per liter total dissolved solids in groundwater (40 C.F.R. 144.3), including exempt aquifers pursuant to Section 146.4 of Title 40 of the Code of Federal Regulations.

(3) Proximity to human population, public water service wells, and private groundwater use, if known.

(4) The presence of existing oil and gas production fields, including the distribution, physical attributes, and operational status of oil and gas wells therein.

(5) Events, including well stimulation treatments and oil and gas well failures, among others, that have the potential to contaminate groundwater, appropriate monitoring to evaluate whether groundwater contamination can be attributable to a particular event, and any monitoring changes necessary if groundwater contamination is observed.

(h) (1) On or before January 1, 2016, the state board or appropriate regional board shall begin implementation of the regional groundwater monitoring programs based upon the model criteria developed under subdivision (c).

(2) In the absence of state implementation of a regional groundwater monitoring program, a well owner or operator may develop and implement an area-specific groundwater monitoring program, for the purpose of subparagraph (D) of paragraph (3) of subdivision (d) of Section 3160 of the Public Resources Code, based upon the model criteria developed under subdivision (c), subject to approval by the state or regional board, and that meets the requirements of this section.

(i) The model criteria for either a well-by-well basis for a well subject to well stimulation treatment, or for a regional groundwater monitoring program, shall be used to satisfy the permitting requirements for well stimulation treatments on oil and gas wells pursuant to Section 3160 of the Public Resources Code. The model criteria used on a well-by-well basis for a well subject to a well stimulation treatment shall be used where no regional groundwater monitoring plan approved by the state or regional board, if applicable, exists and has been implemented by either the state or regional board or the well owner or operator.

(j) The model criteria shall accommodate monitoring where surface access is limited. Monitoring is not required for oil and gas wells where the wells do not penetrate groundwater of beneficial use, as determined by a regional water quality control board, or solely penetrate exempt aquifers pursuant to Section 146.4 of Title 40 of the Code of Federal Regulations.

(k) (1) The model criteria and groundwater monitoring programs shall be reviewed and updated periodically, as needed.

(2) The use of the United States Environmental Protection Agency's definition of an Underground Source of Drinking Water as containing less than 10,000 milligrams per liter total dissolved solids in groundwater (40 C.F.R. 144.3) and whether exempt aquifers pursuant to Section 146.4 of Title 40 of the Code of Federal Regulations shall be subject to groundwater monitoring shall be reviewed by the state board through a public process on or before January 1, 2020.

(l) (1) All groundwater quality data collected pursuant to subparagraph (F) of paragraph (1) of subdivision (d) of Section 3160 of the Public Resources Code shall be submitted to the state board in an electronic format that is compatible with the state board's GeoTracker database, following the guidelines detailed in Chapter 30 (commencing with Section 3890) of Division 3 of Title 23 of the California Code of Regulations.

(2) A copy of the reported data under paragraph (1) shall be transferred by the state board to a public, nonprofit doctoral-degree-granting educational institution located in the San Joaquin Valley, administered pursuant to Section 9 of Article IX of the California Constitution, in order to form the basis of a comprehensive groundwater quality data repository to promote research, foster interinstitutional collaboration, and seek understanding of the numerous factors influencing the state's groundwater.

(m) The adoption of criteria required pursuant to this section is exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of criteria pursuant to this section shall instead be accomplished by means of a public process reasonably calculated to give those persons interested in their adoption an opportunity to be heard. *(Amended by Stats. 2014, Ch. 35, Sec. 183. Effective June 20, 2014.)*

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## **PART 2.10. WATER SUPPLY PLANNING TO SUPPORT EXISTING AND PLANNED FUTURE USES [10910. - 10915.]**

*(Part 2.10 added by Stats. 1995, Ch. 881, Sec. 4.)*

**§ 10910.** (a) Any city or county that determines that a project, as defined in Section 10912, is subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) under Section 21080 of the Public Resources Code shall comply with this part.

(b) The city or county, at the time that it determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration is required for any project subject to the California Environmental Quality Act pursuant to Section 21080.1 of the Public Resources Code, shall identify any water system that is, or may become as a result of supplying water

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to the project identified pursuant to this subdivision, a public water system, as defined in Section 10912, that may supply water for the project. If the city or county is not able to identify any public water system that may supply water for the project, the city or county shall prepare the water assessment required by this part after consulting with any entity serving domestic water supplies whose service area includes the project site, the local agency formation commission, and any public water system adjacent to the project site.

(c) (1) The city or county, at the time it makes the determination required under Section 21080.1 of the Public Resources Code, shall request each public water system identified pursuant to subdivision (b) to determine whether the projected water demand associated with a proposed project was included as part of the most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with Section 10610).

(2) If the projected water demand associated with the proposed project was accounted for in the most recently adopted urban water management plan, the public water system may incorporate the requested information from the urban water management plan in preparing the elements of the assessment required to comply with subdivisions (d), (e), (f), and (g).

(3) If the projected water demand associated with the proposed project was not accounted for in the most recently adopted urban water management plan, or the public water system has no urban water management plan, the water supply assessment for the project shall include a discussion with regard to whether the public water system's total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the projected water demand associated with the proposed project, in addition to the public water system's existing and planned future uses, including agricultural and manufacturing uses.

(4) If the city or county is required to comply with this part pursuant to subdivision (b), the water supply assessment for the project shall include a discussion with regard to whether the total projected water supplies, determined to be available by the city or county for the project during normal, single dry, and multiple dry water years during a 20-year projection, will meet the projected water demand associated with the proposed project, in addition to existing and planned future uses, including agricultural and manufacturing uses.

(d) (1) The assessment required by this section shall include an identification of any existing water supply entitlements, water rights, or water service contracts relevant to the identified water supply for the proposed project, and a description of the quantities of water received in prior years by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), under the existing water supply entitlements, water rights, or water service contracts.

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(2) An identification of existing water supply entitlements, water rights, or water service contracts held by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), shall be demonstrated by providing information related to all of the following:

(A) Written contracts or other proof of entitlement to an identified water supply.

(B) Copies of a capital outlay program for financing the delivery of a water supply that has been adopted by the public water system.

(C) Federal, state, and local permits for construction of necessary infrastructure associated with delivering the water supply.

(D) Any necessary regulatory approvals that are required in order to be able to convey or deliver the water supply.

(e) If no water has been received in prior years by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), under the existing water supply entitlements, water rights, or water service contracts, the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), shall also include in its water supply assessment pursuant to subdivision (c), an identification of the other public water systems or water service contractholders that receive a water supply or have existing water supply entitlements, water rights, or water service contracts, to the same source of water as the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), has identified as a source of water supply within its water supply assessments.

(f) If a water supply for a proposed project includes groundwater, the following additional information shall be included in the water supply assessment:

(1) A review of any information contained in the urban water management plan relevant to the identified water supply for the proposed project.

(2) A description of any groundwater basin or basins from which the proposed project will be supplied. For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), has the legal right to pump under the order or decree. For basins that have not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current bulletin of the department that characterizes the condition of the groundwater basin, and a detailed description by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), of the efforts

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being undertaken in the basin or basins to eliminate the long-term overdraft condition.

(3) A detailed description and analysis of the amount and location of groundwater pumped by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), for the past five years from any groundwater basin from which the proposed project will be supplied. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(4) A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), from any basin from which the proposed project will be supplied. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(5) An analysis of the sufficiency of the groundwater from the basin or basins from which the proposed project will be supplied to meet the projected water demand associated with the proposed project. A water supply assessment shall not be required to include the information required by this paragraph if the public water system determines, as part of the review required by paragraph (1), that the sufficiency of groundwater necessary to meet the initial and projected water demand associated with the project was addressed in the description and analysis required by paragraph (4) of subdivision (b) of Section 10631.

(g) (1) Subject to paragraph (2), the governing body of each public water system shall submit the assessment to the city or county not later than 90 days from the date on which the request was received. The governing body of each public water system, or the city or county if either is required to comply with this act pursuant to subdivision (b), shall approve the assessment prepared pursuant to this section at a regular or special meeting.

(2) Prior to the expiration of the 90-day period, if the public water system intends to request an extension of time to prepare and adopt the assessment, the public water system shall meet with the city or county to request an extension of time, which shall not exceed 30 days, to prepare and adopt the assessment.

(3) If the public water system fails to request an extension of time, or fails to submit the assessment notwithstanding the extension of time granted pursuant to paragraph (2), the city or county may seek a writ of mandamus to compel the governing body of the public water system to comply with the requirements of this part relating to the submission of the water supply assessment.

(h) Notwithstanding any other provision of this part, if a project has been the subject of a water supply assessment that complies with the requirements

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of this part, no additional water supply assessment shall be required for subsequent projects that were part of a larger project for which a water supply assessment was completed and that has complied with the requirements of this part and for which the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), has concluded that its water supplies are sufficient to meet the projected water demand associated with the proposed project, in addition to the existing and planned future uses, including, but not limited to, agricultural and industrial uses, unless one or more of the following changes occurs:

(1) Changes in the project that result in a substantial increase in water demand for the project.

(2) Changes in the circumstances or conditions substantially affecting the ability of the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), to provide a sufficient supply of water for the project.

(3) Significant new information becomes available which was not known and could not have been known at the time when the assessment was prepared. *(Amended by Stats. 2001, Ch. 643, Sec. 4.5. Effective January 1, 2002.)*

**§ 10911.** (a) If, as a result of its assessment, the public water system concludes that its water supplies are, or will be, insufficient, the public water system shall provide to the city or county its plans for acquiring additional water supplies, setting forth the measures that are being undertaken to acquire and develop those water supplies. If the city or county, if either is required to comply with this part pursuant to subdivision (b), concludes as a result of its assessment, that water supplies are, or will be, insufficient, the city or county shall include in its water supply assessment its plans for acquiring additional water supplies, setting forth the measures that are being undertaken to acquire and develop those water supplies. Those plans may include, but are not limited to, information concerning all of the following:

(1) The estimated total costs, and the proposed method of financing the costs, associated with acquiring the additional water supplies.

(2) All federal, state, and local permits, approvals, or entitlements that are anticipated to be required in order to acquire and develop the additional water supplies.

(3) Based on the considerations set forth in paragraphs (1) and (2), the estimated timeframes within which the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), expects to be able to acquire additional water supplies.

(b) The city or county shall include the water supply assessment provided pursuant to Section 10910, and any information provided pursuant to subdivision (a), in any environmental document prepared for the project

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pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(c) The city or county may include in any environmental document an evaluation of any information included in that environmental document provided pursuant to subdivision (b). The city or county shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If the city or county determines that water supplies will not be sufficient, the city or county shall include that determination in its findings for the project. *(Amended by Stats. 2001, Ch. 643, Sec. 5. Effective January 1, 2002.)*

**§ 10912.** For the purposes of this part, the following terms have the following meanings:

(a) “Project” means any of the following:

(1) A proposed residential development of more than 500 dwelling units.

(2) A proposed shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.

(3) A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.

(4) A proposed hotel or motel, or both, having more than 500 rooms.

(5) (A) Except as otherwise provided in subparagraph (B), a proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.

(B) A proposed photovoltaic or wind energy generation facility approved on or after the effective date of the amendments made to this section at the 2011–12 Regular Session is not a project if the facility would demand no more than 75 acre-feet of water annually.

(6) A mixed-use project that includes one or more of the projects specified in this subdivision.

(7) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

(b) If a public water system has fewer than 5,000 service connections, then “project” means any proposed residential, business, commercial, hotel or motel, or industrial development that would account for an increase of 10 percent or more in the number of the public water system’s existing service connections, or a mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by residential development that would represent an increase of 10 percent or more in the number of the public water system’s existing service connections.

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(c) “Public water system” means a system for the provision of piped water to the public for human consumption that has 3,000 or more service connections. A public water system includes all of the following:

(1) Any collection, treatment, storage, and distribution facility under control of the operator of the system that is used primarily in connection with the system.

(2) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system.

(3) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(d) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

*(Amended by Stats. 2011, Ch. 588, Sec. 1. Effective October 8, 2011. Repealed as of January 1, 2017, by its own provisions. See later operative version added by Sec. 2 of Ch. 588.)*

**§ 10912.** For the purposes of this part, the following terms have the following meanings:

(a) “Project” means any of the following:

(1) A proposed residential development of more than 500 dwelling units.

(2) A proposed shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.

(3) A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.

(4) A proposed hotel or motel, or both, having more than 500 rooms.

(5) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.

(6) A mixed-use project that includes one or more of the projects specified in this subdivision.

(7) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

(b) If a public water system has fewer than 5,000 service connections, then “project” means any proposed residential, business, commercial, hotel or motel, or industrial development that would account for an increase of 10 percent or more in the number of the public water system’s existing service connections, or a mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by residential development that would represent an increase of 10 percent or more in the number of the public water system’s existing service connections.

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(c) “Public water system” means a system for the provision of piped water to the public for human consumption that has 3,000 or more service connections. A public water system includes all of the following:

(1) Any collection, treatment, storage, and distribution facility under control of the operator of the system that is used primarily in connection with the system.

(2) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system.

(3) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(d) This section shall become operative on January 1, 2017.

*(Repealed (in Sec. 1) and added by Stats. 2011, Ch. 588, Sec. 2. Effective October 8, 2011. Section operative January 1, 2017, by its own provisions.)*

**§ 10914.** (a) Nothing in this part is intended to create a right or entitlement to water service or any specific level of water service.

(b) Nothing in this part is intended to either impose, expand, or limit any duty concerning the obligation of a public water system to provide certain service to its existing customers or to any future potential customers.

(c) Nothing in this part is intended to modify or otherwise change existing law with respect to projects which are not subject to this part.

(d) This part applies only to a project for which a notice of preparation is submitted on or after January 1, 1996.

*(Added by Stats. 1995, Ch. 881, Sec. 4. Effective January 1, 1996.)*

**§ 10915.** The County of San Diego is deemed to comply with this part if the Office of Planning and Research determines that all of the following conditions have been met:

(a) Proposition C, as approved by the voters of the County of San Diego in November 1988, requires the development of a regional growth management plan and directs the establishment of a regional planning and growth management review board.

(b) The County of San Diego and the cities in the county, by agreement, designate the San Diego Association of Governments as that review board.

(c) A regional growth management strategy that provides for a comprehensive regional strategy and a coordinated economic development and growth management program has been developed pursuant to Proposition C.

(d) The regional growth management strategy includes a water element to coordinate planning for water that is consistent with the requirements of this part.

(e) The San Diego County Water Authority, by agreement with the San Diego Association of Governments in its capacity as the review board, uses the

association's most recent regional growth forecasts for planning purposes and to implement the water element of the strategy.

(f) The procedures established by the review board for the development and approval of the regional growth management strategy, including the water element and any certification process established to ensure that a project is consistent with that element, comply with the requirements of this part.

(g) The environmental documents for a project located in the County of San Diego include information that accomplishes the same purposes as a water supply assessment that is prepared pursuant to Section 10910.

*(Amended by Stats. 2001, Ch. 643, Sec. 8. Effective January 1, 2002.)*

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### **PART 3. CENTRAL VALLEY PROJECT [11100. - 11985.]**

*(Part 3 added by Stats. 1943, Ch. 370.)*

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### **CHAPTER 3. THE DEPARTMENT OF WATER RESOURCES [11419. - 11465.]**

*(Heading of Chapter 3 amended by Stats. 1957, Ch. 1932.)*

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#### **Article 3. Limitation of Powers [11460. - 11465.]**

*(Heading of Article 3 renumbered from Article 4 by Stats. 1957, Ch. 1932.)*

**§ 11460.** In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 11461.** In no other way than by purchase or otherwise as provided in this part shall water rights of a watershed, area, or the inhabitants be impaired or curtailed by the department, but the provisions of this article shall be strictly limited to the acts and proceedings of the department, as such, and shall not apply to any persons or state agencies.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 11462.** The provisions of this article shall not be so construed as to create any new property rights other than against the department as provided in this part or to require the department to furnish to any person without adequate compensation therefor any water made available by the construction of any works by the department.

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*(Amended by Stats. 1957, Ch. 1932.)*

**§ 11463.** In the construction and operation by the department of any project under the provisions of this part, no exchange of the water of any watershed or area for the water of any other watershed or area may be made by the department unless the water requirements of the watershed or area in which the exchange is made are first and at all times met and satisfied to the extent that the requirements would have been met were the exchange not made, and no right to the use of water shall be gained or lost by reason of any such exchange.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 11464.** No water right, reservoir, conduit, or facility for the generation, production, transmission, or distribution of electric power, acquired by the department shall ever be sold, granted, or conveyed by the department so that the department thereby is divested of the title to and ownership of it.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 11465.** The department shall not make any change, alteration, or revision of any rates, prices, or charges established by any contract entered into pursuant to this part except as provided by the contract.

*(Amended by Stats. 1957, Ch. 1932.)*

#### **CHAPTER 4. COOPERATION WITH THE UNITED STATES [11500. - 11500.]**

*(Chapter 4 added by Stats. 1943, Ch. 370.)*

**§ 11500.** Notwithstanding anything in this part to the contrary or in conflict herewith the department may do any or all of the following:

(a) Enter into contracts with the United States for the construction, maintenance, or operation of all or any part of the project or for the financing thereof.

(b) Enter into contracts for the acquisition by the department of the works and properties of the project or any part thereof and for the repayment by the department of the cost thereof to the United States.

(c) Conform to such requirements, not otherwise inconsistent with the law of this State, as may be prescribed by the United States under congressional legislation now in effect or which may hereafter be adopted or under rules and regulations duly adopted thereunder.

(d) Transfer land owned or acquired for the construction of the project, or any part thereof to the United States pursuant to a contract with the department for such construction in conjunction with the construction of a federally authorized project utilizing the facilities with the state authorized project.

(e) Otherwise co-operate with the United States to the end that the people of the State may receive the benefits to be derived from the construction, maintenance, and operation of the project.

*(Amended by Stats. 1959, Ch. 2064.)*

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## **CHAPTER 10. FISH AND WILDLIFE AND RECREATION IN CONNECTION WITH STATE WATER PROJECTS [11900. - 11925.]**

*(Chapter 10 added by Stats. 1961, Ch. 867.)*

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### **Article 4. Planning and Construction of Projects [11910. - 11915.5.]**

*(Article 4 added by Stats. 1961, Ch. 867.)*

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§ 11912. The department, in fixing and establishing prices, rates, and charges for water and power, shall include as a reimbursable cost of any state water project an amount sufficient to repay all costs incurred by the department, directly or by contract with other agencies, for the preservation of fish and wildlife and determined to be allocable to the costs of the project works constructed for the development of that water and power, or either. Costs incurred for the enhancement of fish and wildlife or for the development of public recreation shall not be included in the prices, rates, and charges for water and power, and shall be nonreimbursable costs.

*(Amended by Stats. 2002, Ch. 664, Sec. 227. Effective January 1, 2003.)*

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## **PART 4.5. SACRAMENTO-SAN JOAQUIN DELTA [12200. - 12227.]**

*(Part 4.5 added by Stats. 1959, Ch. 1766.)*

### **CHAPTER 1. GENERAL POLICY [12200. - 12205.]**

*(Chapter 1 added by Stats. 1959, Ch. 1766.)*

§ 12200. The Legislature hereby finds that the water problems of the Sacramento-San Joaquin Delta are unique within the State; the Sacramento and San Joaquin Rivers join at the Sacramento-San Joaquin Delta to discharge their fresh water flows into Suisun, San Pablo and San Francisco Bays and thence into the Pacific Ocean; the merging of fresh water with saline bay waters and drainage waters and the withdrawal of fresh water for beneficial uses creates an acute problem of salinity intrusion into the vast network of channels and sloughs of the Delta; the State Water Resources Development System has as one of its objectives the transfer of waters from water-surplus areas in the Sacramento Valley and the north coastal area to water-deficient areas to the south and west

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of the Sacramento-San Joaquin Delta via the Delta; water surplus to the needs of the areas in which it originates is gathered in the Delta and thereby provides a common source of fresh water supply for water-deficient areas. It is, therefore, hereby declared that a general law cannot be made applicable to said Delta and that the enactment of this law is necessary for the protection, conservation, development, control and use of the waters in the Delta for the public good.  
*(Added by Stats. 1959, Ch. 1766.)*

**§ 12201.** The Legislature finds that the maintenance of an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta area as set forth in Section 12220, Chapter 2, of this part, and to provide a common source of fresh water for export to areas of water deficiency is necessary to the peace, health, safety and welfare of the people of the State, except that delivery of such water shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code.  
*(Added by Stats. 1959, Ch. 1766.)*

**§ 12202.** Among the functions to be provided by the State Water Resources Development System, in coordination with the activities of the United States in providing salinity control for the Delta through operation of the Federal Central Valley Project, shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta. If it is determined to be in the public interest to provide a substitute water supply to the users in said Delta in lieu of that which would be provided as a result of salinity control no added financial burden shall be placed upon said Delta water users solely by virtue of such substitution. Delivery of said substitute water supply shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code.  
*(Added by Stats. 1959, Ch. 1766.)*

**§ 12203.** It is hereby declared to be the policy of the State that no person, corporation or public or private agency or the State or the United States should divert water from the channels of the Sacramento-San Joaquin Delta to which the users within said Delta are entitled.  
*(Added by Stats. 1959, Ch. 1766.)*

**§ 12204.** In determining the availability of water for export from the Sacramento-San Joaquin Delta no water shall be exported which is necessary to meet the requirements of Sections 12202 and 12203 of this chapter.  
*(Added by Stats. 1959, Ch. 1766.)*

**§ 12205.** It is the policy of the State that the operation and management of releases from storage into the Sacramento-San Joaquin Delta of water for use outside the area in which such water originates shall be integrated to the

maximum extent possible in order to permit the fulfillment of the objectives of this part.

*(Added by Stats. 1959, Ch. 1766.)*

## **CHAPTER 2. THE DELTA [12220. - 12220.]**

*(Chapter 2 added by Stats. 1959, Ch. 1766.)*

**§ 12220.** The Sacramento-San Joaquin Delta shall include all the lands within the area bounded as follows, and as shown on the attached map prepared by the Department of Water Resources titled "Sacramento-San Joaquin Delta," dated May 26, 1959:

NOTICE OF INCOMPLETE TEXT: The Sacramento-San Joaquin Delta Map appears in the hard-copy publication of the chaptered bill.  
See Chapter 1766, page 4248, Statutes of 1959.

Beginning at the Sacramento River at the I Street bridge proceeding westerly along the Southern Pacific Railroad to its intersection with the west levee of the Yolo By-Pass; southerly along the west levee to an intersection with Putah Creek, then westerly along the left bank of Putah Creek to an intersection with the north-south section line dividing sections 29 and 28, T8N, R6E; south along this section line to the northeast corner of section 5, T7N, R3E; west to the northwest corner of said section; south along west boundary of said section to intersection of Reclamation District No. 2068 boundary at northeast corner of SE  $\frac{1}{4}$  of section 7, T7N, R3E; southwest along Reclamation District No. 2068 boundary to southeast corner of SW  $\frac{1}{4}$  of section 8, T6N, R2E; west to intersection of Maine Prairie Water Association boundary at southeast corner of SW  $\frac{1}{4}$  of section 7, T6N, R2E; along the Maine Prairie Water Association boundary around the northern and western sides to an intersection with the southeast corner of section 6, T5N, R2E; west to the southwest corner of the SE  $\frac{1}{4}$  of said section; south to the southwest corner of the NE  $\frac{1}{4}$  of section 7, T5N, R2E; east to the southeast corner of the NE  $\frac{1}{4}$  of said section; south to the southeast corner of said section; west to the northeast corner of section 13, T5N, R1E; south to the southeast corner of said section; west to the northwest corner of the NE  $\frac{1}{4}$  of section 23, T5N, R1E; south to the southwest corner of the NE  $\frac{1}{4}$  of said section; west to the northwest corner of the SW  $\frac{1}{4}$  of said section; south to the southwest corner of the NW  $\frac{1}{4}$  of section 26, T5N, R1E; east to the northeast corner of the SE  $\frac{1}{4}$  of section 25, T5N, R1E; south to the southeast corner of said section; east to the northeast corner of section 31, T5N, R2E; south to the southeast corner of the NE  $\frac{1}{4}$  of said section; east to the northeast corner of the SE  $\frac{1}{4}$  of section 32, T5N, R2E; south to the northwest corner of section 4, T4N, R2E; east to the northeast corner of said section; south to the southwest corner of the NW  $\frac{1}{4}$  of section 3, T4N, R2E; east to the northeast corner of the SE  $\frac{1}{4}$  of said section; south to the southwest corner of the NW  $\frac{1}{4}$  of section 11, T4N, R2E; east to the southeast corner of the NE  $\frac{1}{4}$  of

the NE ¼ of said section; south along the east line of section 11, T4N, R2E to a road intersection approximately 1000 feet south of the southeast corner of said section; southeasterly along an unnamed road to its intersection with the right bank of the Sacramento River about 0.7 mile upstream from the Rio Vista bridge; southwesterly along the right bank of the Sacramento River to the northern boundary of section 28, T3N, R2E; westerly along the northern boundary of sections 28, 29, and 30, T3N, R2E and sections 25 and extended 26, T3N, R1E to the northwest corner of extended section 26, T3N, R1E; northerly along the west boundary of section 23, T3N, R1E to the northwest corner of said section; westerly along the northern boundary of sections 22 and 21, T3N, R1E to the Sacramento Northern Railroad; southerly along the Sacramento Northern Railroad; southerly along the Sacramento Northern Railroad to the ferry slip on Chipps Island; across the Sacramento River to the Mallard Slough pumping plant intake channel of the California Water Service Company; southward along the west bank of the intake channel and along an unnamed creek flowing from Lawler Ravine to the southern boundary of the Contra Costa County Water District; easterly along the southern boundary of the Contra Costa County Water District to the East Contra Costa Irrigation District boundary; southeasterly along the southwestern boundaries of the East Contra Costa Irrigation District, Byron-Bethany Irrigation District, West Side Irrigation District and Banta-Carbona Irrigation District to the northeast corner of the NW ¼ of section 9, T3S, R6E; east along Linne Road to Kasson Road; southeasterly along Kasson Road to Durham Ferry Road; easterly along Durham Ferry Road to its intersection with the right bank of the San Joaquin River at Reclamation District No. 2064; southeasterly along Reclamation District No. 2064 boundary, around its eastern side to Reclamation District No. 2075 and along the eastern and northern sides of Reclamation District No. 2075 to its intersection with the Durham Ferry Road; north along the Durham Ferry Road to its intersection with Reclamation District No. 17; along the eastern side of Reclamation District No. 17 to French Camp Slough; northerly along French Camp Turnpike to Center Street; north along Center Street to Weber Avenue; east along Weber Avenue to El Dorado Street; north along El Dorado Street to Harding Way; west along Harding Way to Pacific Avenue; north along Pacific Avenue to the Calaveras River; easterly along the left bank of the Calaveras River to a point approximately 1,600 feet west of the intersection of the Western Pacific Railroad and the left bank of said river; across the Calaveras River and then north 18° 26' 36" west a distance of approximately 2,870 feet; south 72° 50' west a distance of approximately 4,500 feet to Pacific Avenue (Thornton Road); north along Pacific Avenue continuing onto Thornton Road to its intersection with the boundary line dividing Woodbridge Irrigation District and Reclamation District No. 348; east along this boundary line to its intersection with the Mokelumne River; continuing easterly along the right bank of the Mokelumne River to an intersection with the range

line dividing R5E and R6E; north along this range line to the Sacramento-San Joaquin County line; west along the county line to an intersection with Reclamation District No. 1609; northerly along the eastern boundary of Reclamation District No. 1609 to the Cosumnes River, upstream along the right bank of the Cosumnes River to an intersection with the eastern boundary of extended section 23, T5N, R5E; north along the eastern boundary of said extended section to the southeast corner of the NE¼ of the NE ¼ of said extended section; west to the southeast corner of the NE ¼ of the NW ¼ of extended section 14, T5N, R5E; west to an intersection with Desmond Road; north along Desmond Road to Wilder-Ferguson Road; west along Wilder-Ferguson Road to the Western Pacific Railroad; north along the Western Pacific Railroad to the boundary of the Elk Grove Irrigation District on the southerly boundary of the N ½ of section 4, T5N, R5E; northerly along the western boundary of the Elk Grove Irrigation District to Florin Road; west on Florin Road to the eastern boundary of Reclamation District No. 673; northerly around Reclamation District No. 673 to an intersection with the Sacramento River and then north along the left bank of the Sacramento River to I Street bridge.

Section, range, and township locations are referenced to the Mount Diablo Base Line and Meridian. Road names and locations are as shown on the following United States Geological Survey Quadrangles, 7.5 minute series: Rio Vista, 1953; Clayton, 1953; Vernalis, 1952; Ripon, 1952; Bruceville, 1953; Florin, 1953; and Stockton West, 1952.

*(Added by Stats. 1959, Ch. 1766. Note: The Sacramento-San Joaquin Delta Map appears in Ch. 1766 on page 4248 of the 1959 Statutes publication.)*

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#### **PART 4.6. SAN JOAQUIN RIVER [12230. - 12233.]**

*(Part 4.6 added by Stats. 1961, Ch. 1454.)*

**§ 12230.** The Legislature hereby finds and declares that a serious problem of water quality exists in the San Joaquin River between the junction of the San Joaquin River and the Merced River and the junction of the San Joaquin River with Middle River; that by virtue of the nature and causes of the problem and its effect upon water supplies in the Sacramento-San Joaquin Delta, it is a matter of statewide interest and is the responsibility of the State to determine an equitable and feasible solution to this problem.

*(Added by Stats. 1961, Ch. 1454.)*

**§ 12231.** It is hereby declared to be the policy of the State that no person, corporation or public or private agency or the State or the United States should divert water from the San Joaquin River and its tributaries to which the users along the portion of the San Joaquin River described in Section 12230 are entitled.

*(Added by Stats. 1961, Ch. 1454.)*

**§ 12232.** The State Water Resources Control Board, the State Department of Water Resources, the California Water Commission, and any other agency of the state having jurisdiction, shall do nothing, in connection with their responsibilities, to cause further significant degradation of the quality of water in that portion of the San Joaquin River between the points specified in Section 12230.

*(Amended by Stats. 1967, Ch. 284.)*

**§ 12233.** Nothing in this part shall be construed as affecting the quality of water diverted into the Sacramento-San Joaquin Delta from the Sacramento River, nor as affecting any vested right to the use of water, regardless of origin, or any water project for which an application to appropriate water was filed with the State Water Resources Control Board prior to June 17, 1961.

*(Amended by Stats. 1967, Ch. 284.)*

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## **CHAPTER 7.5. PROTECTION OF GROUND WATER BASINS [12920. - 12924.]**

*(Chapter 7.5 added by Stats. 1961, Ch. 1620.)*

### **Article 1. Short Title [12920. - 12920.]**

*(Article 1 added by Stats. 1961, Ch. 1620.)*

**§ 12920.** This chapter shall be known as, and may be cited as, the Porter-Dolwig Ground Water Basin Protection Law.

*(Added by Stats. 1961, Ch. 1620.)*

### **Article 2. Definitions [12921. - 12921.3.]**

*(Article 2 added by Stats. 1961, Ch. 1620.)*

**§ 12921.** The definitions in this article govern the construction of this chapter.

*(Added by Stats. 1961, Ch. 1620.)*

**§ 12921.1.** “Department” means the Department of Water Resources.

*(Added by Stats. 1961, Ch. 1620.)*

**§ 12921.2.** “Local agency” means any county, city, state agency or public district.

*(Added by Stats. 1961, Ch. 1620.)*

**§ 12921.3.** “Project” means any physical structure or facility proposed or constructed under this chapter for the conservation, storage, regulation, reclamation, treatment or transportation of water to replenish, recharge, or restore a ground water basin, or to prevent, stem, or repel the intrusion of sea water therein, or to improve the quality of the waters thereof, when such basin is relied upon as a source of public water supply.

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*(Added by Stats. 1961, Ch. 1620.)*

### **Article 3. Declaration of Policy [12922. - 12922.1.]**

*(Article 3 added by Stats. 1961, Ch. 1620.)*

**§ 12922.** It is hereby declared that the people of the State have a primary interest in the correction and prevention of irreparable damage to, or impaired use of, the ground water basins of this State caused by critical conditions of overdraft, depletion, sea water intrusion or degraded water quality.

*(Added by Stats. 1961, Ch. 1620.)*

**§ 12922.1.** The Legislature finds and declares that the greater portion of the water used in this State is stored, regulated, distributed and furnished by its ground water basins, and that such basins are subject to critical conditions of overdraft, depletion, sea water intrusion and degraded water quality causing great detriment to the peace, health, safety and welfare of the people of the State.

*(Added by Stats. 1961, Ch. 1620.)*

### **Article 4. Declaration of Intent [12923. - 12924.]**

*(Article 4 added by Stats. 1961, Ch. 1620.)*

**§ 12923.** It is the intention of the Legislature that the department shall, whenever money has been appropriated for the purpose, initiate or participate in investigations, studies, plans and design criteria for construction of any project, or projects, deemed by the department to be practical, economically feasible and urgently needed to accomplish the purposes of this chapter.

It is the further intention of the Legislature that upon the submission by any local agency, or agencies, to the department of plans and design criteria for any project, or projects, a review, evaluation and any necessary revision of such plans and design criteria shall be made by the department to insure that construction of such project, or projects, will accomplish the purposes of this chapter.

It is the further intention of the Legislature that where a local agency, or agencies, has duly instituted a project, the department may provide technical assistance to the local agency. Any participation by the department shall be pursuant to a cooperative agreement between the department and local agency which clearly outlines the area of participation, the reporting procedure, and the maximum limitation upon cost. Funds for the technical assistance provided under this section shall be as set forth in the cooperative agreement with substantial participation or cost sharing, or both, by the local agency.

*(Amended by Stats. 1967, Ch. 1460.)*

**§ 12923.1.** The results of the investigations and studies conducted and the plans and design criteria developed by the department pursuant to this article

shall be transmitted to the State Water Resources Control Board and to the appropriate California regional water quality control boards for their consideration in the adoption of state policy for water quality control, water quality control plans and waste discharge requirements.

*(Added by Stats. 1969, Ch. 482.)*

**§ 12924.** (a) The department, in conjunction with other public agencies, shall conduct an investigation of the state's groundwater basins. The department shall identify the state's groundwater basins on the basis of geological and hydrological conditions and consideration of political boundary lines whenever practical. The department shall also investigate existing general patterns of groundwater extraction and groundwater recharge within those basins to the extent necessary to identify basins that are subject to critical conditions of overdraft.

(b) The department may revise the boundaries of groundwater basins identified in subdivision (a) based on its own investigations or information provided by others.

(c) The department shall report its findings to the Governor and the Legislature not later than January 1, 2012, and thereafter in years ending in 5 or 0.

*(Amended by Stats. 2014, Ch. 346, Sec. 7. Effective January 1, 2015.)*

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## **DIVISION 7. WATER QUALITY [13000. - 16104.]**

*(Division 7 repealed and added by Stats. 1969, Ch. 482.)*

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### **CHAPTER 3. STATE WATER QUALITY CONTROL [13100. - 13197.5.]**

*(Chapter 3 added by Stats. 1969, Ch. 482.)*

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#### **Article 3. State Policy for Water Quality Control [13140. - 13148.]**

*(Article 3 added by Stats. 1969, Ch. 482.)*

**§ 13140.** The state board shall formulate and adopt state policy for water quality control. Such policy shall be adopted in accordance with the provisions of this article and shall be in conformity with the policies set forth in Chapter 1 (commencing with Section 13000).

*(Added by Stats. 1969, Ch. 482.)*

**§ 13141.** State policy for water quality control adopted or revised in accordance with the provisions of this article, and regional water quality control plans approved or revised in accordance with Section 13245, shall become a part of the California Water Plan effective when such state policy for water quality

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control, and such regional water quality control plans have been reported to the Legislature at any session thereof.

However, prior to implementation of any agricultural water quality control program, an estimate of the total cost of such a program, together with an identification of potential sources of financing, shall be indicated in any regional water quality control plan.

*(Amended by Stats. 1976, Ch. 149.)*

**§ 13142.** State policy for water quality control shall consist of all or any of the following:

(a) Water quality principles and guidelines for long-range resource planning, including ground water and surface water management programs and control and use of recycled water.

(b) Water quality objectives at key locations for planning and operation of water resource development projects and for water quality control activities.

(c) Other principles and guidelines deemed essential by the state board for water quality control.

The principles, guidelines, and objectives shall be consistent with the state goal of providing a decent home and suitable living environment for every Californian.

*(Amended by Stats. 1995, Ch. 28, Sec. 18. Effective January 1, 1996.)*

**§ 13142.5.** In addition to any other policies established pursuant to this division, the policies of the state with respect to water quality as it relates to the coastal marine environment are that:

(a) Wastewater discharges shall be treated to protect present and future beneficial uses, and, where feasible, to restore past beneficial uses of the receiving waters. Highest priority shall be given to improving or eliminating discharges that adversely affect any of the following:

- (1) Wetlands, estuaries, and other biologically sensitive sites.
- (2) Areas important for water contact sports.
- (3) Areas that produce shellfish for human consumption.
- (4) Ocean areas subject to massive waste discharge.

Ocean chemistry and mixing processes, marine life conditions, other present or proposed outfalls in the vicinity, and relevant aspects of areawide waste treatment management plans and programs, but not of convenience to the discharger, shall for the purposes of this section, be considered in determining the effects of such discharges. Toxic and hard-to-treat substances should be pretreated at the source if such substances would be incompatible with effective and economical treatment in municipal treatment plants.

(b) For each new or expanded coastal powerplant or other industrial installation using seawater for cooling, heating, or industrial processing, the best

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available site, design, technology, and mitigation measures feasible shall be used to minimize the intake and mortality of all forms of marine life.

(c) Where otherwise permitted, new warmed or cooled water discharges into coastal wetlands or into areas of special biological importance, including marine reserves and kelp beds, shall not significantly alter the overall ecological balance of the receiving area.

(d) Independent baseline studies of the existing marine system should be conducted in the area that could be affected by a new or expanded industrial facility using seawater in advance of the carrying out of the development.

(e) (1) Adequately treated recycled water should, where feasible, be made available to supplement existing surface and underground supplies and to assist in meeting future water requirements of the coastal zone, and consideration, in statewide programs of financial assistance for water pollution or water quality control, shall be given to providing optimum water recycling and use of recycled water.

(2) If recycled water is available for industrial use, any discharge to waters in the coastal zone, including the San Francisco Bay, after industrial use, may be authorized if all of the following conditions are met:

(A) The discharge will not unreasonably affect beneficial uses.

(B) The discharge is consistent with applicable water quality control plans and state policy for water quality control.

(C) The use of recycled water is consistent with Chapter 7 (commencing with Section 13500).

(D) The discharge is consistent with all applicable requirements of Chapter 5.5 (commencing with Section 13370).

(E) The discharge is to the same general receiving water location as that to which the wastewater would be discharged if not reused.

(3) Any requirement imposed pursuant to Section 13263 or 13377 shall be adjusted to reflect a credit for waste present in the recycled water before reuse. The credit shall be limited to the difference between the amount of waste present in the nonrecycled water supply otherwise available to the industry and the amount of waste present in the recycled water.

(4) If the amount of waste in the discharge exceeds prescribed requirements because the amount of waste in the recycled water is in excess of that agreed to be furnished by the supplier to the discharger, no enforcement action shall be taken against the discharger unless both of the following statements apply:

(A) The supplier of the recycled water fails to correct the problem within 30 days after the cause of the problem is identified, or within any greater period of time agreed to by the appropriate regional board.

(B) The discharger continues to receive the recycled water from the supplier.

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(f) This section shall not apply to industrial discharges into publicly owned treatment works.

*(Amended by Stats. 1995, Ch. 28, Sec. 19. Effective January 1, 1996.)*

**§ 13143.** State policy for water quality control shall be periodically reviewed and may be revised.

*(Added by Stats. 1969, Ch. 482.)*

**§ 13144.** During the process of formulating or revising state policy for water quality control the state board shall consult with and carefully evaluate the recommendations of concerned federal, state, and local agencies.

*(Added by Stats. 1969, Ch. 482.)*

**§ 13145.** The state board shall take into consideration the effect of its actions pursuant to this chapter on the California Water Plan as adopted or revised pursuant to Division 6 (commencing with Section 10000) of this code, and on any other general or coordinated governmental plan looking toward the development, utilization, or conservation of the waters of the state.

*(Added by Stats. 1969, Ch. 482.)*

**§ 13146.** State offices, departments and boards, in carrying out activities which affect water quality, shall comply with state policy for water quality control unless otherwise directed or authorized by statute, in which case they shall indicate to the state board in writing their authority for not complying with such policy.

*(Added by Stats. 1969, Ch. 482.)*

**§ 13147.** The state board shall not adopt state policy for water quality control unless a public hearing is first held respecting the adoption of such policy. At least 60 days in advance of such hearing the state board shall notify any affected regional boards, unless notice is waived by such boards, and shall give notice of such hearing by publication within the affected region pursuant to Section 6061 of the Government Code. The regional boards shall submit written recommendations to the state board at least 20 days in advance of the hearing.

*(Amended by Stats. 1971, Ch. 1288.)*

**§ 13148.** (a) This section applies to the following hydrologic regions as identified in the California Water Plan: Central Coast, South Coast, San Joaquin River, Tulare Lake, and the Counties of Butte, Glenn, Placer, Sacramento, Solano, Sutter, and Yolo.

(b) Notwithstanding Article 1 (commencing with Section 116775) of Chapter 5 of Part 12 of Division 104 of the Health and Safety Code, any local agency that owns or operates a community sewer system or water recycling facility and that is subject to a finding made by a regional board pursuant to subdivision (e) may take action to control salinity input from residential self-

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regenerating water softeners to protect the quality of the waters of the state. A local agency may take action only by adoption of an ordinance or resolution after a public hearing. The local agency shall not consider the adoption of an ordinance or resolution until at least 30 days following the date of the public hearing on the proposed ordinance or resolution. An ordinance or resolution shall become effective 30 days from the date of adoption.

(c) Actions to control residential self-regenerating water softener salinity inputs authorized by subdivision (b) include, but are not limited to, any of the following:

(1) Require that residential self-regenerating water softeners installed within the jurisdiction of the local agency be rated at the highest efficiency commercially available and certified by NSF International or the American National Standards Institute.

(2) Require that plumbing permits be obtained prior to the installation of residential self-regenerating water softeners.

(3) Require that residential self-regenerating water softeners be plumbed to hook up to hot water only.

(4) Enact a voluntary buy-back or exchange program for residential self-regenerating water softeners, consistent with existing law. A voluntary buy-back or exchange program may be conducted in cooperation with local water treatment businesses.

(5) Require the removal of previously installed residential self-regenerating water softeners.

(6) Prohibit the installation of residential self-regenerating water softeners.

(7) Require the retrofit of clock control and demand control systems on previously installed residential self-regenerating water softeners.

(8) Require the replacement of previously installed residential self-regenerating water softeners with appliances that meet or exceed the salt efficiency rating set forth in paragraph (2) of subdivision (b) of Section 116785 of the Health and Safety Code.

(d) If a local agency adopts an ordinance or resolution to require the removal of previously installed residential self-regenerating water softeners pursuant to paragraph (5) of subdivision (c), the local agency shall make available to owners of residential self-regenerating water softeners within its service area a program to compensate the owner of the residential self-regenerating water softener for the reasonable value of the removed residential self-regenerating water softener, as determined by the local agency.

(e) Before a local agency may take action to control salinity input from residential self-regenerating water softeners pursuant to subdivision (b), a regional board with jurisdiction over a region identified in subdivision (a) shall have made a finding at a public hearing that the control of residential salinity

input will contribute to the achievement of water quality objectives. The finding may be made in any of the following water quality actions adopted by a regional board:

(1) A total maximum daily load that addresses salinity-related pollutants in a water segment.

(2) A salt and nutrient management plan for a groundwater basin or subbasin.

(3) Waste discharge requirements for a local agency discharger.

(4) Master reclamation permit for a supplier or distributor of recycled water.

(5) Water recycling requirements for a supplier or distributor of recycled water.

(6) Cease and desist order directed to a local agency.

(f) The regional board making a finding pursuant to subdivision (e) shall base its finding on the evidence in the record, such as a source determination study or other appropriate studies. The standard of judicial review required for a finding made pursuant to subdivision (e) shall be the same as the standard of review required for the water quality action in which the finding is made.

(g) This section does not limit the use of portable exchange water softening appliances or limit the authority of a local agency to regulate the discharge from a centralized portable exchange tank servicing facility into the community sewer system.

(h) For purposes of this section, “residential self-regenerating water softener” means residential water softening equipment or conditioning appliances that discharge brine into a community sewer system.

*(Added by Stats. 2009, Ch. 527, Sec. 2. Effective January 1, 2010.)*

#### **Article 4. Other Powers and Duties of the State Board [13160. - 13193.9.]**

*(Article 4 added by Stats. 1969, Ch. 482.)*

**§ 13160.** The state board is designated as the state water pollution control agency for all purposes stated in the Federal Water Pollution Control Act and any other federal act, heretofore or hereafter enacted, and is (a) authorized to give any certificate or statement required by any federal agency pursuant to any such federal act that there is reasonable assurance that an activity of any person subject to the jurisdiction of the state board will not reduce water quality below applicable standards, and (b) authorized to exercise any powers delegated to the state by the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.) and acts amendatory thereto.

*(Amended by Stats. 1976, Ch. 596.)*

**§ 13160.1.** (a) The state board may establish a reasonable fee schedule to cover the costs incurred by the state board and the regional boards in connection with any certificate that is required or authorized by any federal law with respect to the effect of any existing or proposed facility, project, or construction work upon the quality of waters of the state, including certificates requested by applicants for a federal permit or license pursuant to Section 401 of the Federal Water Pollution Control Act, as amended, and certificates requested pursuant to Section 169 of the Internal Revenue Code, as amended, with respect to water pollution control facilities.

(b) In providing for the recovery of costs incurred by the state board and regional board pursuant to this section, the state board may include in the fee schedule, but is not limited to including, the costs incurred in reviewing applications for certificates, prescribing terms of certificates and monitoring requirements, enforcing and evaluating compliance with certificates and monitoring requirements, conducting monitoring and modeling, analyzing laboratory samples, reviewing documents prepared for the purpose of regulating activities subject to certificates, and administrative costs incurred in connection with carrying out these actions. The costs of reviewing applications for certificates include, but are not limited to, the costs incurred in anticipation of the filing of an application for a certificate, including participation in any prefiling consultation, and investigation or studies to evaluate the impacts of the proposed activity.

(c) (1) The fee schedule may provide for payment of a single fee in connection with the filing of an application, or for periodic or annual fees, as appropriate to the type of certificate issued and the activity authorized by the certificate.

(2) The fee schedule authorized by this section may impose a fee upon any of the following:

(A) Any person who files an application for a certificate.

(B) Any person who files with the state board or a regional board a notice of intent to file an application for a certificate, or who files with a federal agency a notice of intent to apply for a federal permit or license for which a certificate will be required under Section 401 of the Federal Water Pollution Control Act.

(C) Any person holding a federal permit or license for which a certificate has been issued.

(D) Any person required to send a notice of intent to the state board or a regional board to proceed with an activity permitted by a general permit subject to certification under Section 13160.

(d) (1) If the state board establishes a fee schedule pursuant to this section, the state board shall adopt the fee schedule by emergency regulation. The state board shall set the amount of total revenues collected each year through the fee authorized by this section at an amount equal to the revenue

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levels set forth in the annual Budget Act for this activity. The state board shall review and revise the fee each fiscal year as necessary to conform with the revenue levels set forth in the annual Budget Act. If the state board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the annual Budget Act, the state board may further adjust the annual fees to compensate for the over or under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, any amendment thereto, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall remain in effect until revised by the state board.

(e) Any fees collected pursuant to this section in connection with certificates for activities involving hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission shall be deposited in the Water Rights Fund.

*(Amended by Stats. 2003, Ch. 741, Sec. 96. Effective January 1, 2004.)*

**§ 13161.** The state board shall annually determine state needs for water quality research and recommend projects to be conducted.

*(Added by Stats. 1969, Ch. 482.)*

**§ 13162.** The state board shall administer any statewide program of research in the technical phases of water quality control which may be delegated to it by law and may accept funds from the United States or any person to that end. The state board may conduct such a program independently, or by contract or in cooperation with any federal or state agency, including any political subdivision of the state, or any person or public or private organization.

*(Added by Stats. 1969, Ch. 482.)*

**§ 13163.** (a) The state board shall coordinate water-quality-related investigations of state agencies, recognizing that other state agencies have primary statutory authority for such investigations, and shall consult with the concerned regional boards in implementing this section.

(b) The state board from time to time shall evaluate the need for water-quality-related investigations to effectively develop and implement statewide policy for water quality control and shall transmit its recommendations for

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investigations to affected or concerned federal, state, and local agencies. The affected state agencies shall comply with the recommendations or shall advise the state board in writing why they do not comply with such recommendations.

(c) State agencies shall submit to the state board plans for and results of all investigations that relate to or have an effect upon water quality for review and comment.

*(Added by Stats. 1969, Ch. 482.)*

**§ 13164.** The state board shall formulate, adopt and revise general procedures for the formulation, adoption and implementation by regional boards of water quality control plans. During the process of formulating or revising such procedures, the state board shall consult with and evaluate the recommendations of any affected regional boards.

*(Amended by Stats. 1972, Ch. 813.)*

**§ 13165.** The state board may require any state or local agency to investigate and report on any technical factors involved in water quality control; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained therefrom.

*(Added by Stats. 1969, Ch. 482.)*

**§ 13166.** The state board, with the assistance of the regional boards, shall prepare and implement a statewide water quality information storage and retrieval program. Such program shall be coordinated and integrated to the maximum extent practicable with data storage and retrieval programs of other agencies.

*(Added by Stats. 1969, Ch. 482.)*

**§ 13167.** (a) The state board shall implement, with the assistance of the regional boards, a public information program on matters involving water quality, and shall place and maintain on its Internet Web site, in a format accessible to the general public, an information file on water quality monitoring, assessment, research, standards, regulation, enforcement, and other pertinent matters.

(b) The information file described in subdivision (a) shall include, but need not be limited to, copies of permits, waste discharge requirements, waivers, enforcement actions, and petitions for review of these actions pursuant to this division. The file shall include copies of water quality control plans and policies, including any relevant management agency agreements pursuant to this chapter and Chapter 4 (commencing with Section 13200), and monitoring data and assessment information, or shall identify Internet links to that information. The state board, in consultation with the regional boards, shall ensure that the information is available in single locations, rather than separately by region, and

that the information is presented in a manner easily understandable by the general public.

*(Amended by Stats. 2006, Ch. 750, Sec. 2. Effective January 1, 2007.)*

**§ 13167.5.** (a) The state board or the regional board, as applicable, shall provide notice and a period of at least 30 days for public comment prior to the adoption of any of the following:

(1) Waste discharge requirements prescribed pursuant to Sections 13263 or 13377.

(2) Water reclamation requirements prescribed pursuant to Section 13523.

(3) An order issued pursuant to Section 13320.

(4) A time schedule order adopted pursuant to Section 13300 that sets forth a schedule of compliance and required actions relating to waste discharge requirements prescribed pursuant to Section 13263 or 13377.

(b) The notification required by subdivision (a) may be provided by mailing a draft of the waste discharge requirements, water reclamation requirements, time schedule order, or order issued pursuant to Section 13320 to each person who has requested notice of the specific item, or by posting a draft of the respective requirements or order on the official Internet site maintained by the state board or regional board, and providing notice of that posting by electronic mail to each person who has requested notice.

(c) This section does not require the state board or the regional board to provide more than one notice or more than one public comment period prior to the adoption of waste discharge requirements, water reclamation requirements, a time schedule order, or an order issued pursuant to Section 13320.

*(Added by Stats. 2003, Ch. 690, Sec. 1. Effective January 1, 2004.)*

**§ 13167.6.** For each meeting agenda notice that the state board provides pursuant to subdivision (b) of Section 11125 of the Government Code, the state board shall make the agenda notice available in both English and Spanish and may make the agenda notice available in any other language.

*(Added by Stats. 2012, Ch. 551, Sec. 2. Effective January 1, 2013.)*

**§ 13168.** The state board shall allocate to the regional boards from funds appropriated to the state board such part thereof as may be necessary for the administrative expenses of such boards. The regional boards shall submit annual budgets to the state board. Subject to the provisions of Chapter 3 (commencing with Section 13291) of Part 3, Division 3, Title 2 of the Government Code and any other laws giving the Department of Finance fiscal and budgetary control over state departments generally, the state board shall prepare an annual budget concerning its activities and the activities of the regional boards.

*(Added by Stats. 1969, Ch. 482.)*

**§ 13169.** (a) The state board is authorized to develop and implement a groundwater protection program as provided under the Safe Drinking Water Act, Section 300 and following of Title 42 of the United States Code, and any federal act that amends or supplements the Safe Drinking Water Act. The authority of the state board under this section includes, but is not limited to, the following:

(1) To apply for and accept state groundwater protection grants from the federal government.

(2) To take any additional action as may be necessary or appropriate to assure that the state's groundwater protection program complies with any federal regulations issued pursuant to the Safe Drinking Water Act or any federal act that amends or supplements the Safe Drinking Water Act.

(b) Nothing in this section is intended to expand the authority of the state board as authorized under the Porter-Cologne Water Quality Control Act (Div. 7 (commencing with Sec. 13000) Wat. C.).

*(Added by Stats. 1997, Ch. 734, Sec. 19. Effective October 7, 1997.)*

**§ 13170.** The state board may adopt water quality control plans in accordance with the provisions of Sections 13240 to 13244, inclusive, insofar as they are applicable, for waters for which water quality standards are required by the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto. Such plans, when adopted, supersede any regional water quality control plans for the same waters to the extent of any conflict.

*(Added by Stats. 1971, Ch. 1288.)*

**§ 13170.1.** The state board shall consider all relevant management agency agreements, which are intended to protect a specific beneficial use of water, prior to adopting all water quality control plans pursuant to Section 13170.

*(Added by Stats. 1989, Ch. 578, Sec. 1.)*

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### **Article 3. Regional Water Quality Control Plans [13240. - 13248.]**

*(Heading of Article 3 amended by Stats. 1969, Ch. 800.)*

**§ 13240.** Each regional board shall formulate and adopt water quality control plans for all areas within the region. Such plans shall conform to the policies set forth in Chapter 1 (commencing with Section 13000) of this division and any state policy for water quality control. During the process of formulating such plans the regional boards shall consult with and consider the recommendations of affected state and local agencies. Such plans shall be periodically reviewed and may be revised.

*(Added by Stats. 1969, Ch. 482.)*

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**§ 13241.** Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
- (d) Economic considerations.
- (e) The need for developing housing within the region.
- (f) The need to develop and use recycled water.

*(Amended by Stats. 1991, Ch. 187, Sec. 2.)*

**§ 13242.** The program of implementation for achieving water quality objectives shall include, but not be limited to:

- (a) A description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private.
- (b) A time schedule for the actions to be taken.
- (c) A description of surveillance to be undertaken to determine compliance with objectives.

*(Added by Stats. 1969, Ch. 482.)*

**§ 13243.** A regional board, in a water quality control plan or in waste discharge requirements, may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted.

*(Added by Stats. 1969, Ch. 482.)*

**§ 13244.** The regional boards shall not adopt any water quality control plan unless a public hearing is first held, after the giving of notice of such hearing by publication in the affected county or counties pursuant to Section 6061 of the Government Code. When the plan proposes to prohibit discharges of waste pursuant to Section 13243, similar notice shall be given by publication pursuant to Section 6061.3 of the Government Code.

*(Added by Stats. 1969, Ch. 482.)*

**§ 13245.** A water quality control plan, or a revision thereof adopted by a regional board, shall not become effective unless and until it is approved by the state board. The state board may approve such plan, or return it to the regional board for further consideration and resubmission to the state board. Upon

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resubmission the state board may either approve or, after a public hearing in the affected region, revise and approve such plan.

*(Amended by Stats. 1971, Ch. 1288.)*

**§ 13245.5.** Guidelines adopted by a regional board shall not become effective unless and until approved by the state board.

*(Added by Stats. 1986, Ch. 758, Sec. 3.)*

**§ 13246.** (a) The state board shall act upon any water quality control plan not later than 60 days from the date the regional board submitted the plan to the state board, or 90 days from the date of resubmission of the plan.

(b) When the state board is acting upon a water quality control plan that is being amended solely for an action related to a regional board's total maximum daily load submittal, not including submittals related to listing, the state board shall not exceed the 60-day timeline, inclusive of the time spent sending the submittal back to the regional board, unless one of the following circumstances exists:

(1) The proposed amendment is for an exceedingly complex total maximum daily load. In order to determine if a total maximum daily load is exceedingly complex, the state board may consider a number of factors including, but not limited to, the volume of the record, the number of pollutants included, the number of dischargers and land uses involved, and the size of the watershed. The reason or reasons that any total maximum daily load is determined to be exceedingly complex shall be provided by the state board to the regional board in writing.

(2) The submittal by the regional board is clearly incomplete.

*(Amended by Stats. 2002, Ch. 20, Sec. 2. Effective April 8, 2002.)*

**§ 13247.** State offices, departments, and boards, in carrying out activities which may affect water quality, shall comply with water quality control plans approved or adopted by the state board unless otherwise directed or authorized by statute, in which case they shall indicate to the regional boards in writing their authority for not complying with such plans.

*(Amended by Stats. 1971, Ch. 1288.)*

**§ 13248.** (a) At any time, the state board may, on its own motion, review the regional board's failure to act under this article.

(b) The state board may find that the failure of the regional board to act was appropriate and proper. Upon finding that the failure of the regional board to act was inappropriate or improper, the state board may direct that appropriate action be taken by the regional board, refer the matter to another state agency having jurisdiction, take appropriate action itself, or take any combination of those actions. In taking any action, the state board is vested with all the powers of the regional boards under this division.

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*(Added by Stats. 2010, Ch. 288, Sec. 21. Effective January 1, 2011.)*

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## **CHAPTER 5.5. COMPLIANCE WITH THE PROVISIONS OF THE FEDERAL WATER POLLUTION CONTROL ACT AS AMENDED IN 1972 [13370. - 13389.]**

*(Chapter 5.5 added by Stats. 1972, Ch. 1256.)*

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**§ 13383.** (a) The state board or a regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements, as authorized by Section 13160, 13376, or 13377 or by subdivisions (b) and (c) of this section, for any person who discharges, or proposes to discharge, to navigable waters, any person who introduces pollutants into a publicly owned treatment works, any person who owns or operates, or proposes to own or operate, a publicly owned treatment works or other treatment works treating domestic sewage, or any person who uses or disposes, or proposes to use or dispose, of sewage sludge.

(b) The state board or the regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.

(c) The state board or a regional board may inspect the facilities of any person subject to this section pursuant to the procedure set forth in subdivision (c) of Section 13267.

*(Amended by Stats. 2003, Ch. 683, Sec. 6. Effective January 1, 2004.)*

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**§ 13385.** (a) A person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) A waste discharge requirement or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(3) A requirement established pursuant to Section 13383.

(4) An order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(5) A requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1341, or 1345), as amended.

(6) A requirement imposed in a pretreatment program approved pursuant to waste discharge requirements issued under Section 13377 or approved pursuant to a permit issued by the administrator.

(b) (1) Civil liability may be imposed by the superior court in an amount not to exceed the sum of both of the following:

(A) Twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

(B) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed twenty-five dollars (\$25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(2) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose the liability.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(d) For purposes of subdivisions (b) and (c), "discharge" includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f) (1) Except as provided in paragraph (2), for the purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(2) (A) For the purposes of subdivisions (h) and (i), a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational

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upset results in violations of more than one effluent limitation and the violations continue for a period of more than one day, if all of the following apply:

(i) The discharger demonstrates all of the following:

(I) The upset was not caused by wastewater treatment operator error and was not due to discharger negligence.

(II) But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day.

(III) The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.

(ii) The discharger is implementing an approved pretreatment program, if so required by federal or state law.

(B) Subparagraph (A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal, except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.

(h) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

(2) For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(i) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(A) Violates a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

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(2) For the purposes of this section, a “period of six consecutive months” means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

(j) Subdivisions (h) and (i) do not apply to any of the following:

(1) A violation caused by one or any combination of the following:

(A) An act of war.

(B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(C) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(D) (i) The operation of a new or reconstructed wastewater treatment unit during a defined period of adjusting or testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit, if all of the following requirements are met:

(I) The discharger has submitted to the regional board, at least 30 days in advance of the operation, an operations plan that describes the actions the discharger will take during the period of adjusting and testing, including steps to prevent violations and identifies the shortest reasonable time required for the period of adjusting and testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit.

(II) The regional board has not objected in writing to the operations plan.

(III) The discharger demonstrates that the violations resulted from the operation of the new or reconstructed wastewater treatment unit and that the violations could not have reasonably been avoided.

(IV) The discharger demonstrates compliance with the operations plan.

(V) In the case of a reconstructed wastewater treatment unit, the unit relies on a biological treatment process that is required to be out of operation for at least 14 days in order to perform the reconstruction, or the unit is required to be out of operation for at least 14 days and, at the time of the reconstruction, the cost of reconstructing the unit exceeds 50 percent of the cost of replacing the wastewater treatment unit.

(ii) For the purposes of this section, “wastewater treatment unit” means a component of a wastewater treatment plant that performs a designated treatment function.

(2) (A) Except as provided in subparagraph (B), a violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

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(i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000, specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i), and the date by which compliance is required to be achieved and, if the final date by which compliance is required to be achieved is later than one year from the effective date of the cease and desist order or time schedule order, specifies the interim requirements by which progress towards compliance will be measured and the date by which the discharger will be in compliance with each interim requirement.

(ii) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan that meets the requirements of Section 13263.3.

(iii) The discharger demonstrates that it has carried out all reasonable and immediately feasible actions to reduce noncompliance with the waste discharge requirements applicable to the waste discharge and the executive officer of the regional board concurs with the demonstration.

(B) Subdivisions (h) and (i) shall become applicable to a waste discharge on the date the waste discharge requirements applicable to the waste discharge are revised and reissued pursuant to Section 13380, unless the regional board does all of the following on or before that date:

(i) Modifies the requirements of the cease and desist order or time schedule order as may be necessary to make it fully consistent with the reissued waste discharge requirements.

(ii) Establishes in the modified cease and desist order or time schedule order a date by which full compliance with the reissued waste discharge requirements shall be achieved. For the purposes of this subdivision, the regional board may not establish this date later than five years from the date the waste discharge requirements were required to be reviewed pursuant to Section 13380. If the reissued waste discharge requirements do not add new effluent limitations or do not include effluent limitations that are more stringent than those in the original waste discharge requirements, the date shall be the same as the final date for compliance in the original cease and desist order or time schedule order or five years from the date that the waste discharge requirements were required to be reviewed pursuant to Section 13380, whichever is earlier.

(iii) Determines that the pollution prevention plan required by clause (ii) of subparagraph (A) is in compliance with the requirements of Section 13263.3 and that the discharger is implementing the pollution prevention plan in a timely and proper manner.

(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section

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13301 or a time schedule order issued pursuant to Section 13300 or 13308, if all of the following requirements are met:

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).

(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(ii) New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures are necessary in order to comply with the effluent limitation and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.

(iv) The discharger is a publicly owned treatment works located in Orange County that is unable to meet effluent limitations for biological oxygen demand, suspended solids, or both, because the publicly owned treatment works meets all of the following criteria:

(I) Was previously operating under modified secondary treatment requirements pursuant to Section 301(h) of the Clean Water Act (33 U.S.C. Sec. 1311(h)).

(II) Did vote on July 17, 2002, not to apply for a renewal of the modified secondary treatment requirements.

(III) Is in the process of upgrading its treatment facilities to meet the secondary treatment standards required by Section 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec. 1311(b)(1)(B)).

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(C) (i) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. Except as provided in clause (ii), for the purposes of this subdivision, the time schedule shall not exceed five years in length.

(ii) (I) For purposes of the upgrade described in subclause (III) of clause (iv) of subparagraph (B), the time schedule shall not exceed 10 years in length.

(II) Following a public hearing, and upon a showing that the discharger is making diligent progress toward bringing the waste discharge into compliance with the effluent limitation, the regional board may extend the time schedule for an additional period not exceeding five years in length, if the discharger demonstrates that the additional time is necessary to comply with the effluent limitation. This subclause does not apply to a time schedule described in subclause (I).

(iii) If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both of the following:

(I) Effluent limitations for the pollutant or pollutants of concern.

(II) Actions and milestones leading to compliance with the effluent limitation.

(D) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan pursuant to Section 13263.3.

(k) (1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:

(A) The compliance project is designed to correct the violations within five years.

(B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.

(C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

(2) For the purposes of this subdivision, "a publicly owned treatment works serving a small community" means a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a

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financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

(l) (1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

(2) For the purposes of this section, a “supplemental environmental project” means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

(3) This subdivision applies to the imposition of penalties pursuant to subdivision (h) or (i) on or after January 1, 2003, without regard to the date on which the violation occurs.

(m) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any liability or penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any liability or penalty imposed under this section shall be required to pay, in addition to that liability or penalty, interest, attorney’s fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person’s penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(n) (1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, moneys collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the federal Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (5) of subdivision (a) shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

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(o) The state board shall continuously report and update information on its Internet Web site, but at a minimum, annually on or before January 1, regarding its enforcement activities. The information shall include all of the following:

(1) A compilation of the number of violations of waste discharge requirements in the previous calendar year, including stormwater enforcement violations.

(2) A record of the formal and informal compliance and enforcement actions taken for each violation, including stormwater enforcement actions.

(3) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

(p) The amendments made to subdivisions (f), (h), (i), and (j) during the second year of the 2001–02 Regular Session apply only to violations that occur on or after January 1, 2003.

*(Amended by Stats. 2011, Ch. 296, Sec. 314. Effective January 1, 2012.)*

**§ 13385.1.** (a) (1) For the purposes of subdivision (h) of Section 13385, a “serious violation” also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations. This paragraph applies only to violations that occur on or after January 1, 2004.

(2) (A) Notwithstanding paragraph (1), a failure to file a discharge monitoring report is not a serious violation for purposes of subdivision (h) of Section 13385 at any time prior to the date a discharge monitoring report is required to be filed or within 30 days after receiving written notice from the state board or a regional board of the need to file a discharge monitoring report, if the discharger submits a written statement to the state board or the regional board that includes both of the following:

(i) A statement that there were no discharges to waters of the United States reportable under the applicable waste discharge requirements during the relevant monitoring period.

(ii) The reason or reasons the required report was not submitted to the regional board by the deadline for filing that report.

(B) Upon the request of the state board or regional board, the discharger may be required to support the statement with additional explanation or evidence.

(C) If, in a statement submitted pursuant to subparagraph (A), the discharger willfully states as true any material fact that he or she knows to be false, that person shall be subject to a civil penalty not exceeding ten thousand dollars (\$10,000). Any public prosecutor may bring an action for a civil penalty

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under this subparagraph in the name of the people of the State of California, and the penalty imposed shall be enforced as a civil judgment.

(D) Notwithstanding subparagraph (A), the failure to file a discharge monitoring report is subject to penalties in accordance with subdivisions (c) and (e) of Section 13385.

(b) (1) Notwithstanding paragraph (1) of subdivision (a), a mandatory minimum penalty shall continue to apply and shall be assessed pursuant to subdivision (h) of Section 13385, but only for each required report that is not timely filed, and shall not be separately assessed for each 30-day period following the deadline for submitting the report, if both of the following conditions are met:

(A) The discharger did not on any occasion previously receive, from the state board or a regional board, a complaint to impose liability pursuant to subdivision (b) or (c) of Section 13385 arising from a failure to timely file a discharge monitoring report, a notice of violation for failure to timely file a discharge monitoring report, or a notice of the obligation to file a discharge monitoring report required pursuant to Section 13383, in connection with its corresponding waste discharge requirements.

(B) The discharges during the period or periods covered by the report do not violate effluent limitations, as defined in subdivision (d), contained in waste discharge requirements.

(2) Paragraph (1) shall only apply to a discharger who does both of the following:

(A) Files a discharge monitoring report that had not previously been timely filed within 30 days after the discharger receives written notice, including notice transmitted by electronic mail, from the state board or regional board concerning the failure to timely file the report.

(B) Pays all penalties assessed by the state board or regional board in accordance with paragraph (1) within 30 days after an order is issued to pay these penalties pursuant to Section 13385.

(3) Notwithstanding paragraph (1), the failure to file a discharge monitoring report is subject to penalties in accordance with subdivisions (c) and (e) of Section 13385.

(4) This subdivision shall become inoperative on January 1, 2014.

(c) (1) Notwithstanding any other provision of law, moneys collected pursuant to this section for a failure to timely file a report, as described in subdivision (a), shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) Notwithstanding Section 13340 of the Government Code, the funds described in paragraph (1) are continuously appropriated, without regard to fiscal years, to the state board for expenditure by the state board to assist regional boards, and other public agencies with authority to clean up waste or

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abate the effects of the waste, in responding to significant water pollution problems.

(d) For the purposes of this section, paragraph (2) of subdivision (f) of Section 13385, and subdivisions (h), (i), and (j) of Section 13385 only, “effluent limitation” means a numeric restriction or a numerically expressed narrative restriction, on the quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants that may be discharged from an authorized location. An effluent limitation may be final or interim, and may be expressed as a prohibition. An effluent limitation, for those purposes, does not include a receiving water limitation, a compliance schedule, or a best management practice.

(e) The amendments made to this section by Senate Bill 1284 of the 2009–10 Regular Session of the Legislature shall apply to violations for which an administrative civil liability complaint or a judicial complaint has not been filed before July 1, 2010, without regard to the date on which the violations occurred. *(Amended by Stats. 2010, Ch. 645, Sec. 2. Effective January 1, 2011.)*

**§ 13385.2.** (a) Prior to the state board or regional board making its findings pursuant to subdivision (k) of Section 13385, the publicly owned treatment works shall demonstrate to the satisfaction of the state board or regional board that the financing plan prepared pursuant to subparagraph (C) of paragraph (1) of subdivision (k) of that section is designed to generate sufficient funding to complete the compliance project within the time period specified pursuant to subparagraph (A) of paragraph (1) of subdivision (k) of that section.

(b) This section shall only become operative if Senate Bill 1733 of the 2005–06 Regular Session is enacted and becomes operative. *(Added by Stats. 2006, Ch. 725, Sec. 1. Effective September 29, 2006. Note: Condition in subd. (b) was satisfied by enactment of Stats. 2006, Ch. 404.)*

**§ 13385.3.** (a) The amendments made to subdivision (k) of Section 13385 of the Water Code by Senate Bill 1733 of the 2005–06 Regular Session shall become operative on July 1, 2007.

(b) This section shall only become operative if Senate Bill 1733 of the 2005–06 Regular Session is enacted and becomes operative. *(Added by Stats. 2006, Ch. 725, Sec. 2. Effective September 29, 2006. Note: Condition in subd. (b) was satisfied by enactment of Stats. 2006, Ch. 404.)*

**§ 13386.** Upon any threatened or continuing violation of any of the requirements listed in paragraphs (1) to (6), inclusive, of subdivision (a) of Section 13385, or upon the failure of any discharger into a public treatment system to comply with any cost or charge adopted by any public agency under Section 204(b) of the Federal Water Pollution Control Act, as amended, the Attorney General, upon the request of the state board or regional board shall petition the appropriate court for the issuance of a preliminary or permanent

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injunction, or both, as appropriate, restraining that person or persons from committing or continuing the violation. Subdivision (b) of Section 13331 shall be applicable to proceedings under this section.

*(Amended by Stats. 1996, Ch. 659, Sec. 27. Effective January 1, 1997.)*

**§ 13387.** (a) Any person who knowingly or negligently does any of the following is subject to criminal penalties as provided in subdivisions (b), (c), and (d):

(1) Violates Section 13375 or 13376.

(2) Violates any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(3) Violates any order or prohibition issued pursuant to Section 13243 or 13301, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(4) Violates any requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1328, 1341, or 1345), as amended.

(5) Introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substances that the person knew or reasonably should have known could cause personal injury or property damage.

(6) Introduces any pollutant or hazardous substance into a sewer system or into a publicly owned treatment works, except in accordance with any applicable pretreatment requirements, which causes the treatment works to violate waste discharge requirements.

(b) Any person who negligently commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000), nor more than twenty-five thousand dollars (\$25,000), for each day in which the violation occurs, by imprisonment for not more than one year in a county jail, or by both that fine and imprisonment. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, subdivision (c), or subdivision (d), punishment shall be by a fine of not more than fifty thousand dollars (\$50,000) for each day in which the violation occurs, by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16, 20, or 24 months, or by both that fine and imprisonment.

(c) Any person who knowingly commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000), nor more than fifty thousand dollars (\$50,000), for each day in which the violation occurs, by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by both that fine and imprisonment. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision or subdivision (d),

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punishment shall be by a fine of not more than one hundred thousand dollars (\$100,000) for each day in which the violation occurs, by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years, or by both that fine and imprisonment.

(d) (1) Any person who knowingly commits any of the violations set forth in subdivision (a), and who knows at the time that the person thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be punished by a fine of not more than two hundred fifty thousand dollars (\$250,000), imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 5, 10, or 15 years, or by both that fine and imprisonment. A person that is an organization shall, upon conviction under this subdivision, be subject to a fine of not more than one million dollars (\$1,000,000). If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, the punishment shall be by a fine of not more than five hundred thousand dollars (\$500,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 10, 20, or 30 years, or by both that fine and imprisonment. A person that is an organization shall, upon conviction for a violation committed after a first conviction of the person under this subdivision, be subject to a fine of not more than two million dollars (\$2,000,000). Any fines imposed pursuant to this subdivision shall be in addition to any fines imposed pursuant to subdivision (c).

(2) In determining whether a defendant who is an individual knew that the defendant's conduct placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for actual awareness or actual belief that the defendant possessed, and knowledge possessed by a person other than the defendant, but not by the defendant personally, cannot be attributed to the defendant.

(e) Any person who knowingly makes any false statement, representation, or certification in any record, report, plan, notice to comply, or other document filed with a regional board or the state board, or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required under this division shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16, 20, or 24 months, or by both that fine and imprisonment. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, punishment shall be by a fine of not more than twenty-five thousand dollars (\$25,000) per day of violation, by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years, or by both that fine and imprisonment.

(f) For purposes of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) For purposes of this section, “organization,” “serious bodily injury,” “person,” and “hazardous substance” shall have the same meaning as in Section 309(c) of the Clean Water Act (33 U.S.C. Sec. 1319(c)), as amended.

(h) (1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, fines collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (4) of subdivision (a) shall be deposited in the Water Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state, or for the purposes authorized in Section 13443.

*(Amended by Stats. 2011, Ch. 15, Sec. 616. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)*

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## **CHAPTER 7. WATER RECLAMATION [13500. - 13557.]**

*(Chapter 7 added by Stats. 1969, Ch. 482.)*

### **Article 1. Short Title [13500. - 13500.]**

*(Article 1 added by Stats. 1969, Ch. 482.)*

**§ 13500.** This chapter shall be known as and may be cited as the Water Recycling Law.

*(Amended by Stats. 1995, Ch. 28, Sec. 25. Effective January 1, 1996.)*

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### **Article 7. Water Reuse [13550. - 13557.]**

*(Heading of Article 7 amended by Stats. 1994, Ch. 724, Sec. 6.)*

**§ 13550.** (a) The Legislature hereby finds and declares that the use of potable domestic water for nonpotable uses, including, but not limited to, cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, is a waste or an unreasonable use of the water within the meaning of Section 2 of Article X of the California Constitution if recycled water is available which meets all of the following conditions, as determined by the state board, after notice to any person or entity who may be ordered to use recycled water or to cease using potable water and a hearing held pursuant to Article 2 (commencing with Section 648) of Chapter 1.5 of Division 3 of Title 23 of the California Code of Regulations:

(1) The source of recycled water is of adequate quality for these uses and is available for these uses. In determining adequate quality, the state board shall consider all relevant factors, including, but not limited to, food and employee safety, and level and types of specific constituents in the recycled water affecting these uses, on a user-by-user basis. In addition, the state board shall consider the effect of the use of recycled water in lieu of potable water on the generation of hazardous waste and on the quality of wastewater discharges subject to regional, state, or federal permits.

(2) The recycled water may be furnished for these uses at a reasonable cost to the user. In determining reasonable cost, the state board shall consider all relevant factors, including, but not limited to, the present and projected costs of supplying, delivering, and treating potable domestic water for these uses and the present and projected costs of supplying and delivering recycled water for these uses, and shall find that the cost of supplying the treated recycled water is comparable to, or less than, the cost of supplying potable domestic water.

(3) After concurrence with the State Department of Public Health, the use of recycled water from the proposed source will not be detrimental to public health.

(4) The use of recycled water for these uses will not adversely affect downstream water rights, will not degrade water quality, and is determined not to be injurious to plantlife, fish, and wildlife.

(b) In making the determination pursuant to subdivision (a), the state board shall consider the impact of the cost and quality of the nonpotable water on each individual user.

(c) The state board may require a public agency or person subject to this article to furnish information which the state board determines to be relevant to making the determination required in subdivision (a).

*(Amended by Stats. 2014, Ch. 544, Sec. 14. Effective January 1, 2015.)*

**§ 13551.** A person or public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, shall not use water from any source of quality suitable for potable domestic use for nonpotable uses, including cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses if suitable recycled water is available as provided in Section 13550; however, any use of recycled water in lieu of water suitable for potable domestic use shall, to the extent of the recycled water so used, be deemed to constitute a reasonable beneficial use of that water and the use of recycled water shall not cause any loss or diminution of any existing water right.

*(Amended by Stats. 1995, Ch. 28, Sec. 40. Effective January 1, 1996.)*

**§ 13552.** The amendments to Sections 13550 and 13551 of the Water Code made during the first year of the 1991–92 Regular Session are not intended to

alter any rights, remedies, or obligations which may exist prior to January 1, 1992, pursuant to, but not limited to, those sections or Chapter 8.5 (commencing with Section 1501) of Part 1 of Division 1 of the Public Utilities Code.

*(Added by Stats. 1991, Ch. 553, Sec. 3.)*

**§ 13552.2.** (a) The Legislature hereby finds and declares that the use of potable domestic water for the irrigation of residential landscaping is a waste or an unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if recycled water, for this use, is available to the residents and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(b) The state board may require a public agency or person subject to this section to submit information that the state board determines may be relevant in making the determination required in subdivision (a).

*(Amended by Stats. 1995, Ch. 28, Sec. 41. Effective January 1, 1996.)*

**§ 13552.4.** (a) Any public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, may require the use of recycled water for irrigation of residential landscaping, if all of the following requirements are met:

(1) Recycled water, for this use, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(2) The use of recycled water does not cause any loss or diminution of any existing water right.

(3) The irrigation systems are constructed in accordance with Chapter 3 (commencing with Section 60301) of Division 4 of Title 22 of the California Code of Regulations.

(b) This section applies to both of the following:

(1) New subdivisions for which the building permit is issued on or after March 15, 1994, or, if a building permit is not required, new structures for which construction begins on or after March 15, 1994, for which the State Department of Public Health has approved the use of recycled water.

(2) Any residence that is retrofitted to permit the use of recycled water for landscape irrigation and for which the State Department of Public Health has approved the use of recycled water.

(c) (1) Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to any project that only involves the repiping, redesign, or use of recycled water for irrigation of residential landscaping necessary to comply with a requirement prescribed by a public agency under subdivision (a).

(2) The exemption in paragraph (1) does not apply to any project to develop recycled water, to construct conveyance facilities for recycled water, or any other project not specified in this subdivision.

*(Amended by Stats. 2010, Ch. 288, Sec. 45. Effective January 1, 2011.)*

**§ 13552.5.** (a) (1) On or before July 31, 2009, the state board shall adopt a general permit for landscape irrigation uses of recycled water for which the State Department of Public Health has established uniform statewide recycling criteria pursuant to Section 13521.

(2) The state board shall establish criteria to determine eligibility for coverage under the general permit.

(3) For the purpose of developing the general permit and establishing eligibility criteria to carry out paragraph (1), the state board shall hold at least one workshop and shall consult with and consider comments from the regional boards, groundwater management agencies and water replenishment districts with statutory authority to manage groundwater pursuant to their principal act, and any interested party.

(4) The general permit shall include language that provides for the modification of the terms and conditions of the general permit if a regulatory or statutory change occurs that affects the application of the general permit or as necessary to ensure protection of beneficial uses.

(b) The state board shall establish a reasonable schedule of fees to reimburse the state board for the costs it incurs in implementing, developing, and administering this section.

(c) Following the adoption of the general permit pursuant to this section, an applicant may obtain coverage for a landscape irrigation use of recycled water by filing a notice of intent to be covered under the general permit and submitting the appropriate fee established pursuant to subdivision (b) to the state board.

(d) Coverage under the general permit adopted pursuant to this section is effective if all of the following apply:

(1) The applicant has submitted a completed application.

(2) The state board has determined that the applicant meets the eligibility criteria established pursuant to paragraph (2) of subdivision (a).

(3) The state board has made the application available for public review and comment for 30 days.

(4) The state board has consulted with the appropriate regional board.

(5) The executive officer of the state board approves the application.

(e) (1) Except as provided by modification of the general permit, a person eligible for coverage under the general permit pursuant to subdivision (d) is not required to become or remain subject to individual waste discharge requirements or water reclamation requirements.

(2) For a landscape irrigation use of recycled water, a person who is subject to general or individual waste discharge requirements prescribed pursuant to Section 13263 or 13377, or is subject to individual or master water reclamation requirements prescribed pursuant to Section 13523 or 13523.1, may apply for coverage under the general permit adopted pursuant to this section in lieu of remaining subject to requirements prescribed pursuant to those sections.

(f) (1) The state board shall designate an ombudsperson to coordinate and facilitate communication on recycled water, on the issuance of water reclamation requirements or waste discharge requirements, as applicable, pursuant to Section 13523 or 13523.1 or this section, and on the promotion of water recycling while ensuring reasonable protection of water quality in accordance with applicable provisions of state and federal water quality law.

(2) The person appointed pursuant to paragraph (1) shall facilitate consultations between the state board and the regional boards relating to matters described in that paragraph.

*(Added by Stats. 2007, Ch. 535, Sec. 2. Effective January 1, 2008.)*

**§ 13552.6.** (a) The Legislature hereby finds and declares that the use of potable domestic water for floor trap priming, cooling towers, and air-conditioning devices is a waste or an unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if recycled water, for these uses, is available to the user, and the water meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(b) The state board may require a public agency or person subject to this section to submit information that the state board determines may be relevant in making the determination required in subdivision (a).

*(Amended by Stats. 1995, Ch. 28, Sec. 43. Effective January 1, 1996.)*

**§ 13552.8.** (a) Any public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, may require the use of recycled water in floor trap priming, cooling towers, and air-conditioning devices, if all of the following requirements are met:

(1) Recycled water, for these uses, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(2) The use of recycled water does not cause any loss or diminution of any existing water right.

(3) If public exposure to aerosols, mist, or spray may occur, appropriate mist mitigation or mist control is provided, such as the use of mist arrestors or the addition of biocides to the water in accordance with criteria established pursuant to Section 13521.

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(4) The person intending to use recycled water has prepared an engineering report pursuant to Section 60323 of Title 22 of the California Code of Regulations that includes plumbing design, cross-connection control, and monitoring requirements for the public agency, which are in compliance with criteria established pursuant to Section 13521.

(b) This section applies to both of the following:

(1) New industrial facilities and subdivisions for which the building permit is issued on or after March 15, 1994, or, if a building permit is not required, new structures for which construction begins on or after March 15, 1994, for which the State Department of Public Health has approved the use of recycled water.

(2) Any structure that is retrofitted to permit the use of recycled water for floor traps, cooling towers, or air-conditioning devices, for which the State Department of Public Health has approved the use of recycled water.

(c) (1) Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to any project which only involves the repiping, redesign, or use of recycled water for floor trap priming, cooling towers, or air-conditioning devices necessary to comply with a requirement prescribed by a public agency under subdivision (a).

(2) The exemption in paragraph (1) does not apply to any project to develop recycled water, to construct conveyance facilities for recycled water, or any other project not specified in this subdivision.

*(Amended by Stats. 2014, Ch. 544, Sec. 15. Effective January 1, 2015.)*

**§ 13553.** (a) The Legislature hereby finds and declares that the use of potable domestic water for toilet and urinal flushing in structures is a waste or an unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if recycled water, for these uses, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(b) The state board may require a public agency or person subject to this section to furnish any information that may be relevant to making the determination required in subdivision (a).

(c) For purposes of this section and Section 13554, “structure” or “structures” means commercial, retail, and office buildings, theaters, auditoriums, condominium projects, schools, hotels, apartments, barracks, dormitories, jails, prisons, and reformatories, and other structures as determined by the State Department of Public Health.

(d) Recycled water may be used in condominium projects, as defined in Section 4125 or 6542 of the Civil Code, subject to all of the following conditions:

(1) Prior to the indoor use of recycled water in any condominium project, the agency delivering the recycled water to the condominium project shall file a report with, and receive written approval of the report from, the State

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Department of Public Health. The report shall be consistent with the provisions of Title 22 of the California Code of Regulations generally applicable to dual-plumbed structures and shall include all the following:

(A) That potable water service to each condominium project will be provided with a backflow protection device approved by the State Department of Public Health to protect the agency's public water system, as defined in Section 116275 of the Health and Safety Code. The backflow protection device approved by the State Department of Public Health shall be inspected and tested annually by a person certified in the inspection of backflow prevention devices.

(B) That any plumbing modifications in the condominium unit or any physical alteration of the structure will be done in compliance with state and local plumbing codes.

(C) That each condominium project will be tested by the recycled water agency or the responsible local agency at least once every four years to ensure that there are no indications of a possible cross connection between the condominium's potable and nonpotable systems.

(D) That recycled water lines will be color coded consistent with current statutes and regulations.

(2) The recycled water agency or the responsible local agency shall maintain records of all tests and annual inspections conducted.

(3) The condominium's declaration, as defined in Section 4135 or 6546 of the Civil Code, shall provide that the laws and regulations governing recycled water apply, shall not permit any exceptions to those laws and regulations, shall incorporate the report described in paragraph (1), and shall contain the following statement:

"NOTICE OF USE OF RECYCLED WATER This property is approved by the State Department of Public Health for the use of recycled water for toilet and urinal flushing. This water is not potable, is not suitable for indoor purposes other than toilet and urinal flushing purposes, and requires dual plumbing. Alterations and modifications to the plumbing system require a permit and are prohibited without first consulting with the appropriate local building code enforcement agency and your property management company or owners' association to ensure that the recycled water is not mixed with the drinking water."

(e) The State Department of Public Health may adopt regulations as necessary to assist in the implementation of this section.

(f) This section shall only apply to condominium projects that are created, within the meaning of Section 4030 or 6580 of the Civil Code, on or after January 1, 2008.

(g) This section and Section 13554 do not apply to a pilot program adopted pursuant to Section 13553.1.

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*(Amended (as amended by Stats. 2012, Ch. 181, Sec. 84) by Stats. 2013, Ch. 605, Sec. 53. Effective January 1, 2014.)*

**§ 13553.1.** (a) The Legislature hereby finds and declares that certain coastal areas of the state have been using sea water to flush toilets and urinals as a means of conserving potable water; that this practice precludes the beneficial reuse of treated wastewater and has had a deleterious effect on the proper wastewater treatment process, and has led to corrosion of the sea water distribution pipelines and wastewater collection systems; and that this situation must be changed.

(b) There is a need for a pilot program to demonstrate that conversion to the use of recycled water in residential buildings for toilet and urinal flushing does not pose a threat to public health and safety.

(c) A city that is providing a separate distribution system for sea water for use in flushing toilets and urinals in residential structures may, by ordinance, authorize the use of recycled water for the flushing of toilets and urinals in residential structures if the level of treatment and the use of the recycled water meets the criteria set by the State Department of Public Health.

*(Amended by Stats. 2014, Ch. 544, Sec. 16. Effective January 1, 2015.)*

**§ 13554.** (a) Any public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, may require the use of recycled water for toilet and urinal flushing in structures, except a mental hospital or other facility operated by a public agency for the treatment of persons with mental disorders, if all of the following requirements are met:

(1) Recycled water, for these uses, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(2) The use of recycled water does not cause any loss or diminution of any existing water right.

(3) The public agency has prepared an engineering report pursuant to Section 60323 of Title 22 of the California Code of Regulations that includes plumbing design, cross-connection control, and monitoring requirements for the use site, which are in compliance with criteria established pursuant to Section 13521.

(b) This section applies only to either of the following:

(1) New structures for which the building permit is issued on or after March 15, 1992, or, if a building permit is not required, new structures for which construction begins on or after March 15, 1992.

(2) Any construction pursuant to subdivision (a) for which the State Department of Public Health has, prior to January 1, 1992, approved the use of recycled water.

(c) Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to any project which only involves the repiping, redesign, or use of recycled water by a structure necessary to comply with a requirement issued by a public agency under subdivision (a). This exemption does not apply to any project to develop recycled water, to construct conveyance facilities for recycled water, or any other project not specified in this subdivision.

*(Amended by Stats. 2014, Ch. 544, Sec. 17. Effective January 1, 2015.)*

**§ 13554.2.** (a) Any person or entity proposing the use of recycled water shall reimburse the State Department of Public Health for reasonable costs that department actually incurs in performing duties pursuant to this chapter.

(b) (1) Upon a request from the person or entity proposing the use of recycled water, the State Department of Public Health shall, within a reasonable time after the receipt of the request, provide an estimate of the costs that it will reasonably incur in the performance of its duties pursuant to this chapter.

(2) For purposes of implementing subdivision (a), that department shall maintain a record of its costs. In determining those costs, that department may consider costs that include, but are not limited to, costs relating to personnel requirements, materials, travel, and office overhead. The amount of reimbursement shall be equal to, and may not exceed, that department's actual costs.

(c) With the consent of the person or entity proposing the use of recycled water, the State Department of Public Health may delegate all or part of the duties that department performs pursuant to this chapter within a county to a local health agency authorized by the board of supervisors to assume these duties, if, in the judgment of that department, the local health agency can perform these duties. Any person or entity proposing the use of recycled water shall reimburse the local health agency for reasonable costs that the local health agency actually incurs in the performance of its duties delegated pursuant to this subdivision.

(d) (1) Upon a request from the person or entity proposing the use of recycled water, the local health agency shall, within a reasonable time after the receipt of the request, provide an estimate of the cost it will reasonably incur in the performance of its duties delegated under subdivision (c).

(2) The local health agency, if delegated duties pursuant to subdivision (c), shall maintain a record of its costs that include, but is not limited to, costs relating to personnel requirements, materials, travel, and office overhead. The amount of reimbursement shall be equal to, and may not exceed, the local health agency's actual costs.

(e) The State Department of Public Health or local health agency shall complete its review of a proposed use of recycled water within a reasonable period of time. That department shall submit to the person or entity proposing

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the use of recycled water a written determination as to whether the proposal submitted is complete for purposes of review within 30 days from the date of receipt of the proposal and shall approve or disapprove the proposed use within 30 days from the date on which that department determines that the proposal is complete.

(f) An invoice for reimbursement of services rendered shall be submitted to the person or entity proposing the use of recycled water subsequent to completion of review of the proposed use, or other services rendered, that specifies the number of hours spent by the State Department of Public Health or local health agency, specific tasks performed, and other costs actually incurred. Supporting documentation, including receipts, logs, timesheets, and other standard accounting documents, shall be maintained by that department or local health agency and copies, upon request, shall be provided to the person or entity proposing the use of recycled water.

(g) For the purposes of this section, “person or entity proposing the use of recycled water” means the producer or distributor of recycled water submitting a proposal to the department.

*(Amended by Stats. 2014, Ch. 544, Sec. 18. Effective January 1, 2015.)*

**§ 13554.3.** The State Water Resources Control Board may establish a reasonable schedule of fees by which it is reimbursed for the costs it incurs pursuant to Sections 13553 and 13554.

*(Added by Stats. 1991, Ch. 723, Sec. 4.)*

**§ 13555.2.** The Legislature hereby finds and declares that many local agencies deliver recycled water for nonpotable uses and that the use of recycled water is an effective means of meeting the demands for new water caused by drought conditions or population increases in the state. It is the intent of the Legislature to encourage the design and construction of water delivery systems on private property that deliver water for both potable and nonpotable uses in separate pipelines.

*(Amended by Stats. 1995, Ch. 28, Sec. 47. Effective January 1, 1996.)*

**§ 13555.3.** (a) Water delivery systems on private property that could deliver recycled water for nonpotable uses described in Section 13550, that are constructed on and after January 1, 1993, shall be designed to ensure that the water to be used for only potable domestic uses is delivered, from the point of entry to the private property to be served, in a separate pipeline which is not used to deliver the recycled water.

(b) This section applies to water delivery systems on private property constructed within either of the following jurisdictions:

(1) One that has an urban water management plan that includes the intent to develop recycled water use.

(2) One that does not have an urban water management plan that includes recycled water use, but that is within five miles of a jurisdiction that does have an urban water management plan that includes recycled water use, and has indicated a willingness to serve the water delivery system.

(c) This section does not preempt local regulation of the delivery of water for potable and nonpotable uses and any local governing body may adopt requirements which are more restrictive than the requirements of this section. *(Amended by Stats. 1995, Ch. 28, Sec. 48. Effective January 1, 1996.)*

**§ 13555.5.** (a) If a recycled water producer determines that within 10 years the recycled water producer proposes to provide recycled water for use for state landscape irrigation that meets all of the conditions set forth in Section 13550, the recycled water producer shall so notify the Department of Transportation and the Department of General Services, and shall identify in the notice the area that is eligible to receive the recycled water, and the necessary infrastructure that the recycled water producer or the retail water supplier proposes to provide, to facilitate delivery of the recycled water.

(b) If notice has been provided pursuant to subdivision (a), all pipe installed by the Department of Transportation or the Department of General Services for landscape irrigation within the identified area shall be of the type necessary to meet the requirements of Section 116815 of the Health and Safety Code and applicable regulations.

*(Added by Stats. 2006, Ch. 541, Sec. 3. Effective January 1, 2007.)*

**§ 13556.** In addition to any other authority provided in law, any water supplier described in subdivision (b) of Section 1745 may acquire, store, provide, sell, and deliver recycled water for any beneficial use, including, but not limited to, municipal, industrial, domestic, and irrigation uses, if the water use is in accordance with statewide recycling criteria and regulations established pursuant to this chapter.

*(Amended by Stats. 1995, Ch. 28, Sec. 49. Effective January 1, 1996.)*

**§ 13557.** (a) On or before December 31, 2009, the department, in consultation with the State Department of Public Health, shall adopt and submit to the California Building Standards Commission regulations to establish a state version of Chapter 16 of the Uniform Plumbing Code adopted by the International Association of Plumbing and Mechanical Officials to provide design standards to safely plumb buildings with both potable and recycled water systems.

(b) Commencing July 1, 2011, and annually thereafter, the department shall review and update, as necessary, the regulations developed pursuant to subdivision (a).

(c) This section shall be exempt from the provisions of Section 161. *(Amended by Stats. 2009, Ch. 178, Sec. 1. Effective October 11, 2009.)*

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**CHAPTER 7.3. DIRECT AND INDIRECT POTABLE REUSE [13560. - 13569.]**

*(Chapter 7.3 added by Stats. 2010, Ch. 700, Sec. 3.)*

**§ 13560.** The Legislature finds and declares the following:

(a) In February 2009, the state board unanimously adopted, as Resolution No. 2009-0011, an updated water recycling policy, which includes the goal of increasing the use of recycled water in the state over 2002 levels by at least 1,000,000 acre-feet per year by 2020 and by at least 2,000,000 acre-feet per year by 2030.

(b) Section 13521 requires the department to establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health.

(c) The use of recycled water for indirect potable reuse is critical to achieving the state board's goals for increased use of recycled water in the state. If direct potable reuse can be demonstrated to be safe and feasible, implementing direct potable reuse would further aid in achieving the state board's recycling goals.

(d) Although there has been much scientific research on public health issues associated with indirect potable reuse through groundwater recharge, there are a number of significant unanswered questions regarding indirect potable reuse through surface water augmentation and direct potable reuse.

(e) Achievement of the state's goals depends on the timely development of uniform statewide recycling criteria for indirect and direct potable water reuse.

(f) This chapter is not intended to delay, invalidate, or reverse any study or project, or development of regulations by the department, the state board, or the regional boards regarding the use of recycled water for indirect potable reuse for groundwater recharge, surface water augmentation, or direct potable reuse.

(g) This chapter shall not be construed to delay, invalidate, or reverse the department's ongoing review of projects consistent with Section 116551 of the Health and Safety Code.

*(Added by Stats. 2010, Ch. 700, Sec. 3. Effective January 1, 2011.)*

**§ 13561.** For purposes of this chapter, the following terms have the following meanings:

(a) "Department" means the State Department of Public Health.

(b) "Direct potable reuse" means the planned introduction of recycled water either directly into a public water system, as defined in Section 116275 of the Health and Safety Code, or into a raw water supply immediately upstream of a water treatment plant.

(c) "Indirect potable reuse for groundwater recharge" means the planned use of recycled water for replenishment of a groundwater basin or an aquifer

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that has been designated as a source of water supply for a public water system, as defined in Section 116275 of the Health and Safety Code.

(d) “Surface water augmentation” means the planned placement of recycled water into a surface water reservoir used as a source of domestic drinking water supply.

(e) “Uniform water recycling criteria” has the same meaning as in Section 13521.

*(Added by Stats. 2010, Ch. 700, Sec. 3. Effective January 1, 2011.)*

**§ 13561.5.** The state board shall enter into an agreement with the department to assist in implementing this chapter.

*(Added by Stats. 2010, Ch. 700, Sec. 3. Effective January 1, 2011.)*

**§ 13562.** (a) (1) On or before December 31, 2013, the department shall adopt uniform water recycling criteria for indirect potable reuse for groundwater recharge.

(2) (A) Except as provided in subparagraph (C), on or before December 31, 2016, the department shall develop and adopt uniform water recycling criteria for surface water augmentation.

(B) Prior to adopting uniform water recycling criteria for surface water augmentation, the department shall submit the proposed criteria to the expert panel convened pursuant to subdivision (a) of Section 13565. The expert panel shall review the proposed criteria and shall adopt a finding as to whether, in its expert opinion, the proposed criteria would adequately protect public health.

(C) The department shall not adopt uniform water recycling criteria for surface water augmentation pursuant to subparagraph (A), unless and until the expert panel adopts a finding that the proposed criteria would adequately protect public health.

(b) Adoption of uniform water recycling criteria by the department is subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

*(Added by Stats. 2010, Ch. 700, Sec. 3. Effective January 1, 2011.)*

**§ 13562.5.** Notwithstanding any other law, no later than June 30, 2014, the department shall adopt, by emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, requirements for groundwater replenishment using recycled water. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare.

Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted by the department pursuant to this section shall not be subject to review by the

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Office of Administrative Law and shall remain in effect until revised by the department.

*(Added by Stats. 2014, Ch. 3, Sec. 15. Effective March 1, 2014.)*

**§ 13563.** (a) (1) On or before December 31, 2016, the department, in consultation with the state board, shall investigate and report to the Legislature on the feasibility of developing uniform water recycling criteria for direct potable reuse.

(2) The department shall complete a public review draft of its report by September 1, 2016. The department shall provide the public not less than 45 days to review and comment on the public review draft.

(3) The department shall provide a final report to the Legislature by December 31, 2016. The department shall make the final report available to the public.

(b) In conducting the investigation pursuant to subdivision (a), the department shall examine all of the following:

(1) The availability and reliability of recycled water treatment technologies necessary to ensure the protection of public health.

(2) Multiple barriers and sequential treatment processes that may be appropriate at wastewater and water treatment facilities.

(3) Available information on health effects.

(4) Mechanisms that should be employed to protect public health if problems are found in recycled water that is being served to the public as a potable water supply, including, but not limited to, the failure of treatment systems at the recycled water treatment facility.

(5) Monitoring needed to ensure protection of public health, including, but not limited to, the identification of appropriate indicator and surrogate constituents.

(6) Any other scientific or technical issues that may be necessary, including, but not limited to, the need for additional research.

(c) (1) Notwithstanding Section 10231.5 of the Government Code, the requirement for submitting a report imposed under paragraph (3) of subdivision (a) is inoperative on December 31, 2020.

(2) A report to be submitted pursuant to paragraph (3) of subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.  
*(Amended by Stats. 2013, Ch. 637, Sec. 1. Effective January 1, 2014.)*

**§ 13563.5.** (a) The department, in consultation with the state board, shall report to the Legislature as part of the annual budget process, in each year from 2011 to 2016, inclusive, on the progress towards developing and adopting uniform water recycling criteria for surface water augmentation and its investigation of the feasibility of developing uniform water recycling criteria for direct potable reuse.

(b) (1) A written report submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

(2) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2017.

*(Added by Stats. 2010, Ch. 700, Sec. 3. Effective January 1, 2011. Repealed as of January 1, 2017, by its own provisions.)*

**§ 13564.** In developing uniform water recycling criteria for surface water augmentation, the department shall consider all of the following:

(a) The final report from the National Water Research Institute Independent Advisory Panel for the City of San Diego Indirect Potable Reuse/Reservoir Augmentation (IPR/RA) Demonstration Project.

(b) Monitoring results of research and studies regarding surface water augmentation.

(c) Results of demonstration studies conducted for purposes of approval of projects using surface water augmentation.

(d) Epidemiological studies and risk assessments associated with projects using surface water augmentation.

(e) Applicability of the advanced treatment technologies required for recycled water projects, including, but not limited to, indirect potable reuse for groundwater recharge projects.

(f) Water quality, limnology, and health risk assessments associated with existing potable water supplies subject to discharges from municipal wastewater, stormwater, and agricultural runoff.

(g) Recommendations of the State of California Constituents of Emerging Concern Recycled Water Policy Science Advisory Panel.

(h) State funded research pursuant to Section 79144 and subdivision (b) of Section 79145.

(i) Research and recommendations from the United States Environmental Protection Agency Guidelines for Water Reuse.

(j) The National Research Council of the National Academies' report titled "Water Reuse: Potential for Expanding the Nation's Water Supply Through Reuse of Municipal Wastewater."

(k) Other relevant research and studies regarding indirect potable reuse of recycled water.

*(Amended by Stats. 2013, Ch. 637, Sec. 2. Effective January 1, 2014.)*

**§ 13565.** (a) (1) On or before February 15, 2014, the department shall convene and administer an expert panel for purposes of advising the department on public health issues and scientific and technical matters regarding development of uniform water recycling criteria for indirect potable reuse through surface water augmentation and investigation of the feasibility of developing uniform water recycling criteria for direct potable reuse. The expert

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panel shall assess what, if any, additional areas of research are needed to be able to establish uniform regulatory criteria for direct potable reuse. The expert panel shall then recommend an approach for accomplishing any additional needed research regarding uniform criteria for direct potable reuse in a timely manner.

(2) The expert panel shall be comprised, at a minimum, of a toxicologist, an engineer licensed in the state with at least three years' experience in wastewater treatment, an engineer licensed in the state with at least three years' experience in treatment of drinking water supplies and knowledge of drinking water standards, an epidemiologist, a limnologist, a microbiologist, and a chemist. The department, in consultation with the advisory group and the state board, shall select the expert panel members.

(3) Members of the expert panel may be reimbursed for reasonable and necessary travel expenses.

(b) (1) On or before January 15, 2014, the department shall convene an advisory group, task force, or other group, comprised of no fewer than nine representatives of water and wastewater agencies, local public health officers, environmental organizations, environmental justice organizations, public health nongovernmental organizations, the department, the state board, the United States Environmental Protection Agency, ratepayer or taxpayer advocate organizations, and the business community, to advise the expert panel regarding the development of uniform water recycling criteria for direct potable reuse and the draft report required by Section 13563. The department, in consultation with the state board, shall select the advisory group members.

(2) Environmental, environmental justice, and public health nongovernmental organization representative members of the advisory group, task force, or other group may be reimbursed for reasonable and necessary travel expenses.

(3) In order to ensure public transparency, the advisory group established pursuant to paragraph (1) shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(c) On or before June 30, 2016, the department shall prepare a draft report summarizing the recommendations of the expert panel.

(d) The department may contract with a public university or other research institution with experience in convening expert panels on water quality or potable reuse to meet all or part of the requirements of this section should the department find that the research institution is better able to fulfill the requirements of this section by the required date.

*(Amended by Stats. 2013, Ch. 637, Sec. 3. Effective January 1, 2014.)*

**§ 13566.** In performing its investigation of the feasibility of developing the uniform water recycling criteria for direct potable reuse, the department shall consider all of the following:

(a) Recommendations from the expert panel appointed pursuant to subdivision (a) of Section 13565.

(b) Recommendations from an advisory group, task force, or other group appointed by the department pursuant to subdivision (b) of Section 13565.

(c) Regulations and guidelines for these activities from jurisdictions in other states, the federal government, or other countries.

(d) Research by the state board regarding unregulated pollutants, as developed pursuant to Section 10 of the recycled water policy adopted by state board Resolution No. 2009-0011.

(e) Results of investigations pursuant to Section 13563.

(f) Water quality and health risk assessments associated with existing potable water supplies subject to discharges from municipal wastewater, stormwater, and agricultural runoff.

*(Added by Stats. 2010, Ch. 700, Sec. 3. Effective January 1, 2011.)*

**§ 13567.** An action authorized pursuant to this chapter shall be consistent, to the extent applicable, with the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.), this division, and the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of Division 104 of the Health and Safety Code).  
*(Added by Stats. 2010, Ch. 700, Sec. 3. Effective January 1, 2011.)*

**§ 13569.** The department may accept funds from nonstate sources and may expend these funds, upon appropriation by the Legislature, for the purposes of this chapter.

*(Amended by Stats. 2013, Ch. 637, Sec. 4. Effective January 1, 2014.)*

## **CHAPTER 7.5. WATER RECYCLING ACT OF 1991 [13575. - 13583.]**

*(Chapter 7.5 added by Stats. 1991, Ch. 187, Sec. 3.)*

**§ 13575.** (a) This chapter shall be known and may be cited as the Water Recycling Act of 1991.

(b) As used in this chapter, the following terms have the following meanings:

(1) "Customer" means a person or entity that purchases water from a retail water supplier.

(2) "Entity responsible for groundwater replenishment" means any person or entity authorized by statute or court order to manage a groundwater basin and acquire water for groundwater replenishment.

(3) "Recycled water" has the same meaning as defined in subdivision (n) of Section 13050.

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(4) “Recycled water producer” means any local public entity that produces recycled water.

(5) “Recycled water wholesaler” means any local public entity that distributes recycled water to retail water suppliers and which has constructed, or is constructing, a recycled water distribution system.

(6) “Retail water supplier” means any local entity, including a public agency, city, county, or private water company, that provides retail water service.

(7) “Retailer” means the retail water supplier (7) in whose service area is located the property to which a customer requests the delivery of recycled water service.

*(Amended by Stats. 1998, Ch. 753, Sec. 1. Effective January 1, 1999.)*

**§ 13576.** The Legislature hereby makes the following findings and declarations:

(a) The State of California is subject to periodic drought conditions.

(b) The development of traditional water resources in California has not kept pace with the state’s population, which is growing at the rate of over 700,000 per year and which is anticipated to reach 36,000,000 by the year 2010.

(c) There is a need for a reliable source of water for uses not related to the supply of potable water to protect investments in agriculture, greenbelts, and recreation and to replenish groundwater basins, and protect and enhance fisheries, wildlife habitat, and riparian areas.

(d) The environmental benefits of recycled water include a reduced demand for water in the Sacramento-San Joaquin Delta that is otherwise needed to maintain water quality, reduced discharge of waste into the ocean, and the enhancement of groundwater basins, recreation, fisheries, and wetlands.

(e) The use of recycled water has proven to be safe from a public health standpoint, and the State Department of Public Health is updating regulations for the use of recycled water.

(f) The use of recycled water is a cost-effective, reliable method of helping to meet California’s water supply needs.

(g) The development of the infrastructure to distribute recycled water will provide jobs and enhance the economy of the state.

(h) Retail water suppliers and recycled water producers and wholesalers should promote the substitution of recycled water for potable water and imported water in order to maximize the appropriate cost-effective use of recycled water in California.

(i) Recycled water producers, retail water suppliers, and entities responsible for groundwater replenishment should cooperate in joint technical, economic, and environmental studies, as appropriate, to determine the feasibility of providing recycled water service.

(j) Retail water suppliers and recycled water producers and wholesalers should be encouraged to enter into contracts to facilitate the service of recycled and potable water by the retail water suppliers in their service areas in the most efficient and cost-effective manner.

(k) Recycled water producers and wholesalers and entities responsible for groundwater replenishment should be encouraged to enter into contracts to facilitate the use of recycled water for groundwater replenishment if recycled water is available and the authorities having jurisdiction approve its use.

(l) Wholesale prices set by recycled water producers and recycled water wholesalers, and rates that retail water suppliers are authorized to charge for recycled water, should reflect an equitable sharing of the costs and benefits associated with the development and use of recycled water.

*(Amended by Stats. 2010, Ch. 288, Sec. 47. Effective January 1, 2011.)*

**§ 13577.** This chapter establishes a statewide goal to recycle a total of 700,000 acre-feet of water per year by the year 2000 and 1,000,000 acre-feet of water per year by the year 2010.

*(Added by Stats. 1991, Ch. 187, Sec. 3.)*

**§ 13578.** (a) In order to achieve the statewide goal for recycled water use established in Section 13577 and to implement the Governor's Advisory Drought Planning Panel Critical Water Shortage Contingency Plan recommendations, Section F2, as submitted December 29, 2000, the department shall identify and report to the Legislature on opportunities for increasing the use of recycled water, as defined in paragraph (3) of subdivision (b) of Section 13575, and identify constraints and impediments, including the level of state financial assistance available for project construction, to increasing the use of recycled water.

(b) The department shall convene a task force, to be known as the 2002 Recycled Water Task Force, to advise the department in implementation of subdivision (a), including making recommendations to the Legislature regarding the following:

(1) How to further the use of recycled water in industrial and commercial applications, including, but not limited to, those applications set forth in Section 13552.8. The task force shall evaluate the current regulatory framework of state and local rules, regulations, ordinances, and permits to identify the obstacles and disincentives to industrial and commercial reuse. Issues to be investigated include, but are not limited to, applicability of visual inspections instead of pressure tests for cross-connections between potable and nonpotable water systems, dual piping trenching restrictions, fire suppression system design, and backflow protections.

(2) Changes in the Uniform Plumbing Code, published by the International Association of Plumbing and Mechanical Officials, that are appropriate to

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facilitate the use of recycled water in industrial and commercial settings. The department shall make recommendations to the California Building Standards Commission with regard to suggested revisions to the California Plumbing Code necessary to incorporate the changes identified by the task force.

(3) Changes in state statutes or the current regulatory framework of state and local rules, regulations, ordinances, and permits appropriate to increase the use of recycled water for commercial laundries and toilet and urinal flushing in structures including, but not limited to, those defined in subdivision (c) of Section 13553. The department shall identify financial incentives to help offset the cost of retrofitting privately and publicly owned structures.

(4) The need to reconvene the California Potable Reuse Committee established by the department in 1993 or convene a successor committee to update the committee's finding that planned indirect potable reuse of recycled water by augmentation of surface water supplies would not adversely affect drinking water quality if certain conditions were met.

(5) The need to augment state water supplies using water use efficiency strategies identified in the CALFED Bay-Delta Program. In its report pursuant to subdivision (a), the department shall identify ways to coordinate with CALFED to assist local communities in educating the public with regard to the statewide water supply benefits of local recycling projects and the level of public health protection ensured by compliance with the uniform statewide water recycling criteria developed by the State Department of Public Health in accordance with Section 13521.

(6) Impediments or constraints, other than water rights, related to increasing the use of recycled water in applications for agricultural, environmental, or irrigation uses, as determined by the department.

(c) (1) The task force shall be convened by the department and be comprised of one representative from each of the following state agencies:

- (A) The department.
- (B) The State Department of Public Health.
- (C) The state board.
- (D) The California Environmental Protection Agency.
- (E) The CALFED Bay-Delta Program.
- (F) The Department of Food and Agriculture.
- (G) The California Building Standards Commission.
- (H) The University of California.
- (I) The Natural Resources Agency.

(2) The task force shall also include one representative from a recognized environmental advocacy group and one representative from a consumer advocacy group, as determined by the department, and one representative of local agency health officers, one representative of urban water wholesalers, one representative from a groundwater management entity, one representative of

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water districts, one representative from a nonprofit association of public and private members created to further the use of recycled water, one representative of commercial real estate, one representative of land development, one representative of industrial interests, and at least two representatives from each of the following as defined in Section 13575:

(A) Recycled water producer.

(B) Recycled water wholesaler.

(C) Retail water supplier.

(d) The department and the task force shall report to the Legislature not later than July 1, 2003.

(e) The department shall carry out the duties of this section only to the extent that funds pursuant to Section 79145, enacted as part of the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act (Division 26 (commencing with Section 79000)), are made available for the purposes of this section.

*(Amended by Stats. 2010, Ch. 288, Sec. 48. Effective January 1, 2011.)*

**§ 13579.** (a) In order to achieve the goals established in Section 13577, retail water suppliers shall identify potential uses for recycled water within their service areas, potential customers for recycled water service within their service areas, and, within a reasonable time, potential sources of recycled water.

(b) Recycled water producers and recycled water wholesalers may also identify potential uses for recycled water, and may assist retail water suppliers in identifying potential customers for recycled water service within the service areas of those retail water suppliers.

(c) Recycled water producers, retail water suppliers, and entities responsible for groundwater replenishment may cooperate in joint technical, economic, and environmental studies, as appropriate, to determine the feasibility of providing recycled water service and recycled water for groundwater replenishment consistent with the criteria set forth in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 13550 and in accordance with Section 60320 of Title 22 of the California Code of Regulations.

*(Amended by Stats. 1998, Ch. 164, Sec. 3. Effective January 1, 1999.)*

**§ 13580.** (a) A retail water supplier that has identified a potential use or customer pursuant to Section 13579 may apply to a recycled water producer or recycled water wholesaler for a recycled water supply.

(b) A recycled water producer or recycled water wholesaler that has identified a potential use or customer pursuant to Section 13579, that is within the service territory or jurisdiction of a retail water supplier, may, in writing, request a retail water supplier to enter into an agreement to provide recycled water to the potential customer.

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(c) A customer may request, in writing, a retailer to enter into an agreement to provide recycled water to the customer.

(d) (1) An entity responsible for groundwater replenishment that is a customer of a retail water supplier and that has identified the potential use of recycled water for groundwater replenishment purposes may, in writing, request that retail water supplier to enter into an agreement to provide recycled water for that purpose consistent with Sections 13580.5, 13580.7, and 13580.8, as applicable. That entity may not obtain recycled water for that purpose from a recycled water producer, a recycled water wholesaler, or another retail water supplier without the agreement of the entity's retail water supplier.

(2) An entity responsible for groundwater replenishment that is not a customer of a retail water supplier and that has identified the potential use of recycled water for groundwater replenishment purposes may, in writing, request a retail water supplier, a recycled water producer, or a recycled water wholesaler to enter into an agreement to provide recycled water for that purpose.

*(Amended by Stats. 2014, Ch. 817, Sec. 2. Effective January 1, 2015.)*

**§ 13580.5.** (a) (1) Subject to subdivision (e) of Section 13580.7, a retail water supplier that receives a request from a customer pursuant to subdivision (c) of Section 13580 shall enter into an agreement to provide recycled water, if recycled water is available, or can be made available, to the retail water supplier for sale to the customer.

(2) Notwithstanding paragraph (1), in accordance with a written agreement between a recycled water producer or a recycled water wholesaler and a retail water supplier, the retail water supplier may delegate to a recycled water producer or a recycled water wholesaler its responsibility under this section to provide recycled water.

(b) A customer may not obtain recycled water from a recycled water producer, a recycled water wholesaler, or a retail water supplier that is not the retailer without the agreement of the retailer.

(c) If either a recycled water producer or a recycled water wholesaler provides a customer of a retail water supplier with a written statement that it can and will provide recycled water to the retailer, the retail water supplier shall, not later than 120 days from the date on which the retail water supplier receives the written statement from the customer, by certified mail, return receipt requested, submit a written offer to the customer that includes the items listed in subdivision (f) of Section 13580.7. A determination of availability pursuant to Section 13550 is not required.

(d) If the state board pursuant to Section 13550 makes a determination that there is available recycled water to serve a customer of a retail water supplier, the retail water supplier, not later than 120 days from the date on

which the retail water supplier receives a copy of that determination from the customer, by certified mail, return receipt requested, shall submit a written offer to the customer.

*(Amended by Stats. 2014, Ch. 817, Sec. 3. Effective January 1, 2015.)*

**§ 13580.7.** (a) This section applies only to a retail water supplier that is either a mutual water company, formed and operating pursuant to Part 7 (commencing with Section 14300) of Division 3 of Title 1 of the Corporations Code, or a public agency.

(b) A customer may request, in writing, a retail water supplier to enter into an agreement or adopt recycled water rates in order to provide recycled water service to the customer. The retail water supplier, by certified mail return receipt requested, shall submit a written offer to the customer not later than 120 days from the date on which the retail water supplier receives the written request from the customer that complies with subdivision (f).

(c) If no rate is in effect for recycled water service within the service area of a retail water supplier, the rate and conditions for recycled water service shall be established by contract between the retail water supplier and the customer, not later than 120 days from the date on which the customer requests a contract, or, by resolution or ordinance by the retail water supplier if it is a public agency, or by resolution if the retail water supplier is a mutual water company, not later than 120 days from the date on which the retail water supplier receives the customer's written request for an ordinance or resolution.

(d) A rate for recycled water service established by contract, ordinance, or resolution, shall reflect a reasonable relationship between the amount of the rate and the retail cost of obtaining or producing the recycled water, the cost of conveying the recycled water, and overhead expenses for providing and administering the use of recycled water service. Capital costs of facilities required to serve the customer shall be amortized over the economic life of the facility, or the length of time the customer agrees to purchase recycled water, whichever is less. The rate shall not exceed the estimated reasonable cost of providing the service, and any additional costs agreed to by the customer for recycled water supplemental treatment.

(e) To the extent feasible, the rate for recycled water shall be comparable to, or less than, the retail water supplier's rate for potable water. If recycled water service cannot be provided at a rate comparable to, or less than, the rate for potable water, the retail water supplier is not required to provide the recycled water service, unless the customer agrees to pay a rate that reimburses the retail water supplier for the costs described in subdivision (c).

(f) The offer required by subdivision (b) and subdivisions (c) and (d) of Section 13580.5 shall identify all of the following:

- (1) The source for the recycled water.

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- (2) The method of conveying the recycled water.
  - (3) A schedule for delivery of the recycled water.
  - (4) The terms of service.
  - (5) The rate for the recycled water, including the per-unit cost for that water.
  - (6) The costs necessary to provide service and the basis for determining those costs.

(g) This section does not apply to recycled water service rates established before January 1, 1999, or any amendments to those rates.

*(Amended by Stats. 2014, Ch. 817, Sec. 4. Effective January 1, 2015.)*

**§ 13580.8.** (a) This section applies only to a retail water supplier that is regulated by the Public Utilities Commission.

(b) Rates for recycled water that is provided to the customer by a retail water supplier regulated by the Public Utilities Commission shall be established by the commission pursuant to Section 455.1 of the Public Utilities Code. A regulated water utility may request the commission to establish the rate or rates for the delivery of recycled or nonpotable water, with the objective of providing, where practicable, a reasonable economic incentive for the customer to purchase recycled or nonpotable water in place of potable water.

(c) A regulated water utility may propose a rate or rates for recycled or nonpotable water by tariff or by contract between the retail water supplier and the customer. Where the rate or rates are set by contract, the water utility and its customer shall meet, confer, and negotiate in good faith to establish a contract rate.

(d) The commission shall, as appropriate, provide a discount from the general metered rate of the water utility for potable water by either of the following means:

(1) Passing through to the customer the net reduction in cost to the water utility in purchasing and delivering recycled or nonpotable water as compared to the cost of purchasing and delivering potable water.

(2) Granting to the customer a uniform discount from the water utility's general metered potable water rate when the discount in paragraph (1) is determined to be an insufficient incentive for the customer to convert to the use of recycled or nonpotable water. If the commission provides for a discount pursuant to this paragraph that is greater than the water utility's reduction in cost, the commission shall authorize the water utility to include the aggregate amount of that discount in its revenue requirements to be applied to, and recovered in, rates that are applicable to all general metered customers.

*(Added by Stats. 1998, Ch. 753, Sec. 5. Effective January 1, 1999.)*

**§ 13580.9.** (a) Notwithstanding any other law, and except as otherwise previously provided for in a contract agreed to by the customer and the City of

West Covina, if the purchaser, contractor, or lessee of, or successor to, all or a portion of the water utility owned by the City of West Covina is a retail water supplier that is regulated by the Public Utilities Commission, rates for recycled or nonpotable water service to a closed hazardous waste and solid waste facility located within the boundaries of the City of West Covina for the purposes of irrigation, recreation, or dust suppression or any other use at that facility shall be established in accordance with subdivisions (a) to (e), inclusive, of Section 13580.7, and if there is a failure to agree on the terms and conditions of a recycled or nonpotable water supply agreement for the delivery of water for those purposes by that purchaser, contractor, lessee, or successor, Section 13581 shall apply.

(b) For the purpose of this section, nonpotable water that is not the result of the treatment of waste shall be treated as the equivalent of recycled water if it is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefor considered a valuable resource, if the use of that water will not adversely affect downstream water rights, degrade water quality, or be injurious to plant life, fish, or wildlife, as provided by statute or by regulations of the State Department of Public Health and the state board or a regional board, as appropriate.

*(Amended by Stats. 2010, Ch. 288, Sec. 49. Effective January 1, 2011.)*

**§ 13581.** (a) If there is a failure to agree on terms and conditions of a recycled water supply agreement involving a retail water supplier that is a public agency within 180 days from the date of the receipt of a request for recycled water pursuant to subdivision (c) of Section 13580, a written statement pursuant to subdivision (c) of Section 13580.5, or a determination of availability pursuant to subdivision (d) of Section 13580.5, any party may request a formal mediation process. The parties shall commence mediation within 60 days after the mediation request is made. If the parties cannot agree on a mediator, the director shall appoint a mediator. The mediator may recommend to the parties appropriate terms and conditions applicable to the service of recycled water. The cost for the services of the mediator shall be divided equally among the parties to the mediation and shall not exceed twenty thousand dollars (\$20,000).

(b) If the parties in mediation reach agreement, both parties together shall draft the contract for the recycled water service. The parties shall sign the contract within 30 days.

(c) If the parties in mediation fail to reach agreement, the affected retail water supplier shall, within 30 days, by resolution or ordinance, adopt a rate for recycled water service. The agency action shall be subject to validating proceedings pursuant to Chapter 9 (commencing with Section 860) of Part 2 of Title 10 of the Code of Civil Procedure, except that there shall not be a

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presumption in favor of the retail water supplier under the action taken to set the rate for recycled water service. The mediator shall file a report with the superior court setting forth the recommendations provided to the parties regarding appropriate terms and conditions applicable to the service of recycled water. Each party shall bear its own costs and attorney's fees.  
*(Amended by Stats. 1998, Ch. 753, Sec. 7. Effective January 1, 1999.)*

**§ 13581.2.** If the retail water supplier is regulated by the Public Utilities Commission, and there is a failure to agree on terms and conditions of a recycle water supply agreement with a customer within 180 days from the date of the receipt of a request for recycled water pursuant to subdivision (c) of Section 13580, a written statement pursuant to subdivision (c) of Section 13580.5, or a determination of availability pursuant to subdivision (d) of Section 13580.5, the matter shall be submitted to the Public Utilities Commission for resolution, and the commission shall determine a contract rate or rates for recycled water as provided in Section 13580.8.

*(Added by Stats. 1998, Ch. 753, Sec. 8. Effective January 1, 1999.)*

**§ 13582.** This chapter is not intended to alter either of the following:

(a) Any rights, remedies, or obligations which may exist pursuant to Article 1.5 (commencing with Section 1210) of Chapter 1 of Part 2 of Division 2 of this code or Chapter 8.5 (commencing with Section 1501) of Part 1 of Division 1 of the Public Utilities Code.

(b) Any rates established or contracts entered into prior to January 1, 1999.

*(Amended by Stats. 1998, Ch. 753, Sec. 9. Effective January 1, 1999.)*

**§ 13583.** (a) If a retail water supplier that is a public agency does not comply with this chapter, the customer may petition a court for a writ of mandate pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure.

(b) If a retail water supplier is regulated by the Public Utilities Commission and does not comply with this chapter, the Public Utilities Commission may order the retailer to comply with this chapter after receiving a petition from the customer specifying the provisions of this chapter with which the retailer has failed to comply.

*(Added by Stats. 1998, Ch. 753, Sec. 10. Effective January 1, 1999.)*

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## **DIVISION 35. SACRAMENTO-SAN JOAQUIN DELTA REFORM ACT OF 2009 [85000. - 85350.]**

*(Division 35 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

### **PART 1. GENERAL PROVISIONS [85000. - 85067.]**

*(Part 1 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

#### **CHAPTER 1. SHORT TITLE AND LEGISLATIVE FINDINGS [85000. - 85004.]**

*(Chapter 1 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

**§ 85000.** This division shall be known, and may be cited, as the Sacramento-San Joaquin Delta Reform Act of 2009.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85001.** The Legislature finds and declares all of the following:

(a) The Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable. Resolving the crisis requires fundamental reorganization of the state's management of Delta watershed resources.

(b) In response to the Delta crisis, the Legislature and the Governor required development of a new long-term strategic vision for managing the Delta. The Governor appointed a Blue Ribbon Task Force to recommend a new "Delta Vision Strategic Plan" to his cabinet committee, which, in turn, made recommendations for a Delta Vision to the Governor and the Legislature on January 3, 2009.

(c) By enacting this division, it is the intent of the Legislature to provide for the sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water supply for the state, to protect and enhance the quality of water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85002.** The Legislature finds and declares that the Sacramento-San Joaquin Delta, referred to as "the Delta" in this division, is a critically important natural resource for California and the nation. It serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85003.** The Legislature finds and declares all of the following:

(a) Originally, the Delta was a shallow wetland with water covering the area for many months of the year. Natural levees, created by deposits of sediment, allowed some islands to emerge during the dry summer months.

Salinity would fluctuate, depending on the season and the amount of precipitation in any one year, and the species that comprised the Delta ecosystem had evolved and adapted to this unique, dynamic system.

(b) Delta property ownership developed pursuant to the federal Swamp Land Act of 1850, and state legislation enacted in 1861, and as a result of the construction of levees to keep previously seasonal wetlands dry throughout the year. That property ownership, and the exercise of associated rights, continue to depend on the landowners' maintenance of those nonproject levees and do not include any right to state funding of levee maintenance or repair.

(c) In 1933, the Legislature approved the California Central Valley Project Act, which relied upon the transfer of Sacramento River water south through the Delta and maintenance of a more constant salinity regime by using upstream reservoir releases of freshwater to create a hydraulic salinity barrier. As a result of the operations of state and federal water projects, the natural salinity variations in the Delta have been altered. Restoring a healthy estuarine ecosystem in the Delta may require developing a more natural salinity regime in parts of the Delta.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85004.** The Legislature finds and declares all of the following:

(a) The economies of major regions of the state depend on the ability to use water within the Delta watershed or to import water from the Delta watershed. More than two-thirds of the residents of the state and more than two million acres of highly productive farmland receive water exported from the Delta watershed.

(b) Providing a more reliable water supply for the state involves implementation of water use efficiency and conservation projects, wastewater reclamation projects, desalination, and new and improved infrastructure, including water storage and Delta conveyance facilities.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

## **CHAPTER 2. DELTA POLICY [85020. - 85023.]**

*(Chapter 2 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

**§ 85020.** The policy of the State of California is to achieve the following objectives that the Legislature declares are inherent in the coequal goals for management of the Delta:

(a) Manage the Delta's water and environmental resources and the water resources of the state over the long term.

(b) Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.

(c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.

(d) Promote statewide water conservation, water use efficiency, and sustainable water use.

(e) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.

(f) Improve the water conveyance system and expand statewide water storage.

(g) Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection.

(h) Establish a new governance structure with the authority, responsibility, accountability, scientific support, and adequate and secure funding to achieve these objectives.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85021.** The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85022.** (a) It is the intent of the Legislature that state and local land use actions identified as "covered actions" pursuant to Section 85057.5 be consistent with the Delta Plan. This section's findings, policies, and goals apply to Delta land use planning and development.

(b) The actions of the council shall be guided by the findings, policies, and goals expressed in this section when reviewing decisions of the commission pursuant to Division 19.5 (commencing with Section 29700) of the Public Resources Code.

(c) The Legislature finds and declares all of the following:

(1) The Delta is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced estuary and wetland ecosystem of hemispheric importance.

(2) The permanent protection of the Delta's natural and scenic resources is the paramount concern to present and future residents of the state and nation.

(3) To promote the public safety, health, and welfare, and to protect public and private property, wildlife, fisheries, and the natural environment, it is necessary to protect and enhance the ecosystem of the Delta and prevent its further deterioration and destruction.

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(4) Existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to persons living and working in the Delta.

(d) The fundamental goals for managing land use in the Delta are to do all of the following:

(1) Protect, maintain, enhance, and, where feasible, restore the overall quality of the Delta environment and its natural and artificial resources.

(2) Ensure the utilization and conservation of Delta resources, taking into account the social and economic needs of the people of the state.

(3) Maximize public access to Delta resources and maximize public recreational opportunities in the Delta consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

(4) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the Delta.

(5) Develop new or improved aquatic and terrestrial habitat and protect existing habitats to advance the goal of restoring and enhancing the Delta ecosystem.

(6) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85023.** The longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

### **CHAPTER 3. MISCELLANEOUS PROVISIONS [85031. - 85034.]**

*(Chapter 3 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

**§ 85031.** (a) This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law. This division does not limit or otherwise affect the application of Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive.

(b) For the purposes of this division, an area that utilizes water that has been diverted and conveyed from the Sacramento River hydrologic region, for use outside the Sacramento River hydrologic region or the Delta, shall not be

deemed to be immediately adjacent thereto or capable of being conveniently supplied with water therefrom by virtue or on account of the diversion and conveyance of that water through facilities that may be constructed for that purpose after January 1, 2010.

(c) Nothing in this division supersedes, limits, or otherwise modifies the applicability of Chapter 10 (commencing with Section 1700) of Part 2 of Division 2, including petitions related to any new conveyance constructed or operated in accordance with Chapter 2 (commencing with Section 85320) of Part 4.

(d) Unless otherwise expressly provided, nothing in this division supersedes, reduces, or otherwise affects existing legal protections, both procedural and substantive, relating to the state board's regulation of diversion and use of water, including, but not limited to, water right priorities, the protection provided to municipal interests by Sections 106 and 106.5, and changes in water rights. Nothing in this division expands or otherwise alters the board's existing authority to regulate the diversion and use of water or the courts' existing concurrent jurisdiction over California water rights.

*(Amended by Stats. 2011, Ch. 296, Sec. 315. Effective January 1, 2012.)*

**§ 85032.** This division does not affect any of the following:

(a) The Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code).

(b) The California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(c) The Fish and Game Code.

(d) The Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000)).

(e) Chapter 8 (commencing with Section 12930) of Part 6 of Division 6.

(f) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(g) Section 1702.

(h) The application of the public trust doctrine.

(i) Any water right.

(j) The liability of the state for flood protection in the Delta or its watershed.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85034.** (a) (1) The council shall administer all contracts, grants, easements, and agreements made or entered into by the California Bay-Delta Authority under Division 26.4 (commencing with Section 79400), as that division read on December 31, 2009.

(2) The exercise of the authority described in paragraph (1) is not subject to review or approval by the Department of General Services.

(3) A contract, lease, license, or any other agreement to which the California Bay-Delta Authority is a party is not void or voidable as a result of the implementation of this subdivision, but shall continue in full force and effect until the end of its term.

(b) The council shall be the successor to and shall assume from the California Bay-Delta Authority all of the administrative rights, abilities, obligations, and duties of that authority.

(c) The council shall have possession and control of all records, papers, equipment, supplies, contracts, leases, agreements, and other property, real or personal, connected with the administration of Division 26.4 (commencing with Section 79400), as that division read on December 31, 2009, or held for the benefit or use of the California Bay-Delta Authority.

(d) The council shall assume from the California Bay-Delta Authority all responsibility to manage, in accordance with Chapter 5 (commencing with Section 85280) of Part 3, the science program element that was required to be undertaken by Division 26.4 (commencing with Section 79400), as that division read on December 31, 2009.

(e) Consistent with the responsibilities and duties assumed by the council pursuant to this section, all staff, resources, and funding within the Natural Resources Agency and the Department of Forestry and Fire Protection for the support of the CALFED Bay-Delta Program are hereby transferred to, and may be expended for the purposes of, the council. The executive officer of the council shall confer with the Director of Fish and Game, the director of the department, and the executive director of the board regarding possible reallocation of the staff and resources. The status, position, and rights of any officer or employee shall not be affected by this transfer and all officers and employees shall be retained pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

*(Amended by Stats. 2011, Ch. 296, Sec. 316. Effective January 1, 2012.)*

#### **CHAPTER 4. DEFINITIONS [85050. - 85067.]**

*(Chapter 4 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

**§ 85050.** Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this division.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85051.** “Acquisition” means the acquisition of a fee interest or any other interest, including easements, leases, and development rights.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85052.** “Adaptive management” means a framework and flexible decisionmaking process for ongoing knowledge acquisition, monitoring, and

evaluation leading to continuous improvement in management planning and implementation of a project to achieve specified objectives.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85053.** “Bay Delta Conservation Plan” or “BDCP” means a multispecies conservation plan.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85054.** “Coequal goals” means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85055.** “Commission” means the Delta Protection Commission established in Division 19.5 (commencing with Section 29700) of the Public Resources Code.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85056.** “Conservancy” means the Sacramento-San Joaquin Delta Conservancy established in Section 32320 of the Public Resources Code.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85057.** “Council” means the Delta Stewardship Council established in Section 85200.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85057.5.** (a) “Covered action” means a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

(1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.

(2) Will be carried out, approved, or funded by the state or a local public agency.

(3) Is covered by one or more provisions of the Delta Plan.

(4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

(b) “Covered action” does not include any of the following:

(1) A regulatory action of a state agency.

(2) Routine maintenance and operation of the State Water Project or the federal Central Valley Project.

(3) Regional transportation plans prepared pursuant to Section 65080 of the Government Code.

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(4) A plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization pursuant to Section 65080 of the Government Code has determined is consistent with either a sustainable communities strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this paragraph, “consistent with” means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.

(5) Routine maintenance and operation of a facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency.

(6) A plan, program, project, or activity that occurs, in whole or in part, in the Delta, if both of the following conditions are met:

(A) The plan, program, project, or activity is undertaken by a local public agency that is located, in whole or in part, in the Delta.

(B) Either a notice of determination is filed, pursuant to Section 21152 of the Public Resources Code, for the plan, program, project, or activity by, or the plan, program, project, or activity is fully permitted by, September 30, 2009.

(7) (A) A project within the secondary zone, as defined pursuant to Section 29731 of the Public Resources Code as of January 1, 2009, for which a notice of approval or determination pursuant to Section 21152 of the Public Resources Code has been filed before the date on which the Delta Plan becomes effective.

(B) A project for which a notice of approval or determination is filed on or after the date on which the final Bay Delta Conservation Plan becomes effective, and before the date on which the Delta Plan becomes effective, is not a covered action but shall be consistent with the Bay Delta Conservation Plan.

(C) Subparagraphs (A) and (B) do not apply to either of the following:

(i) A project that is within a Restoration Opportunity Area as shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy of the Bay Delta Conservation Plan, August 3, 2009, or as shown in a final Bay Delta Conservation Plan.

(ii) A project that is within the alignment of a conveyance facility as shown in Figures 1 to 5, inclusive, of the Final Draft Initial Assessment of Dual Delta Water Conveyance Report, April 23, 2008, and in future revisions of this document by the department.

(8) Leases approved by a special district if all of the following apply:

(A) The uses proposed by the lease are authorized by the applicable general plan and zoning ordinances of the city where the special district is located.

(B) The uses proposed by the lease are approved by the city where the special district is located and the city complies with Chapter 3 (commencing with Section 85225) of Part 3, if applicable, prior to approval of the lease by the special district.

(C) The special district complies with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) prior to approving the lease.

(9) (A) Routine dredging activities that are necessary for maintenance of facilities operated by a special district.

(B) For purposes of this paragraph, “routine dredging activities” are limited to the following:

(i) Dredging to maintain the Stockton Deep Water Ship Channel at a depth of 40 feet in the sediment trap at the confluence of the San Joaquin River, between river mile 39.3 to river mile 40.2, and to maintain the remaining Stockton Deep Water Ship Channel at a depth of 35 feet plus two feet of overdredge from river mile 35 to river mile 43.

(ii) Dredging designed to maintain the Sacramento Deep Water Ship Channel at a depth of 30 feet plus two feet of overdredge from river mile 0.0 to river mile 30, and at a depth of 35 feet from river mile 35 to river mile 43.

(C) Except as provided by this subdivision, it is the intent of the Legislature that this exemption shall not be interpreted or treated as changing or modifying current substantive and procedural regulations applicable to the decision to approve dredging operations.

(c) For purposes of this section, “special district” means the Port of Stockton or the Port of West Sacramento.

(d) This section shall not be interpreted to authorize the abrogation of a vested right whether created by statute or by common law.

*(Amended by Stats. 2013, Ch. 76, Sec. 199. Effective January 1, 2014.)*

**§ 85058.** “Delta” means the Sacramento-San Joaquin Delta as defined in Section 12220 and the Suisun Marsh, as defined in Section 29101 of the Public Resources Code.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85059.** “Delta Plan” means the comprehensive, long-term management plan for the Delta as adopted by the council in accordance with this division.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85060.** “Delta watershed” means the Sacramento River Hydrologic Region and the San Joaquin River Hydrologic Region as described in the department’s Bulletin No. 160-05.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85064.** “Public water agency” means a public entity, as defined in Section 514, that provides water service, as defined in Section 515.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85066.** “Restoration” means the application of ecological principles to restore a degraded or fragmented ecosystem and return it to a condition in which its biological and structural components achieve a close approximation of its natural potential, taking into consideration the physical changes that have occurred in the past and the future impact of climate change and sea level rise.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85067.** “Strategic Plan” means both the “Delta Vision Strategic Plan” issued by the Delta Vision Blue Ribbon Task Force on October 17, 2008, and the “Delta Vision Implementation Report” adopted by the Delta Vision Committee and dated December 31, 2008.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

## **PART 2. EARLY ACTIONS [85080. - 85089.]**

*(Part 2 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

**§ 85080.** The council shall appoint a Delta Independent Science Board in accordance with Section 85280.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85082.** The council shall develop and implement a strategy to appropriately engage participation of the federal agencies with responsibilities in the Delta. This strategy shall include engaging these federal agencies to develop the Delta Plan consistent with the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and Section 8 of the federal Reclamation Act of 1902.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85084.** The council shall develop an interim plan that includes recommendations for early actions, projects, and programs.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85084.5.** The Department of Fish and Game, in consultation with the United States Fish and Wildlife Service and the National Marine Fisheries Service and based on the best available science, shall develop and recommend to the board Delta flow criteria and quantifiable biological objectives for aquatic and terrestrial species of concern dependent on the Delta. The recommendations

shall be developed no later than 12 months after the date of enactment of this division.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85085.** The department shall do all of the following:

(a) Coordinate with the Department of Fish and Game, the board, the California regional water quality control boards, and the State Lands Commission efforts to cooperate with the United States Bureau of Reclamation to construct and implement the Two-Gates Fish Protection Demonstration Project by December 1, 2010.

(b) Evaluate the effectiveness of the Three Mile Slough Barrier project.

(c) Expeditiously move ahead with other near term actions as identified in the Strategic Plan.

(d) Assist in implementing early action ecosystem restoration projects, including, but not limited to, Dutch Slough tidal marsh restoration and Meins Island tidal marsh restoration.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85086.** (a) The board shall establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010.

(b) It is the intent of the Legislature to establish an accelerated process to determine instream flow needs of the Delta for the purposes of facilitating the planning decisions that are required to achieve the objectives of the Delta Plan.

(c) (1) For the purpose of informing planning decisions for the Delta Plan and the Bay Delta Conservation Plan, the board shall, pursuant to its public trust obligations, develop new flow criteria for the Delta ecosystem necessary to protect public trust resources. In carrying out this section, the board shall review existing water quality objectives and use the best available scientific information. The flow criteria for the Delta ecosystem shall include the volume, quality, and timing of water necessary for the Delta ecosystem under different conditions. The flow criteria shall be developed in a public process by the board within nine months of the enactment of this division. The public process shall be in the form of an informational proceeding conducted pursuant to Article 3 (commencing with Section 649) of Chapter 1.5 of Division 3 of Title 23 of the California Code of Regulations, and shall provide an opportunity for all interested persons to participate. The flow criteria shall not be considered predecisional with regard to any subsequent board consideration of a permit, including any permit in connection with a final BDCP.

(2) Any order approving a change in the point of diversion of the State Water Project or the federal Central Valley Project from the southern Delta to a point on the Sacramento River shall include appropriate Delta flow criteria and shall be informed by the analysis conducted pursuant to this section. The flow criteria shall be subject to modification over time based on a science-based

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adaptive management program that integrates scientific and monitoring results, including the contribution of habitat and other conservation measures, into ongoing Delta water management.

(3) Nothing in this section amends or otherwise affects the application of the board's authority under Part 2 (commencing with Section 1200) of Division 2 to include terms and conditions in permits that in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated.

(d) The board shall enter into an agreement with the State Water Project contractors and the federal Central Valley Project contractors, who rely on water exported from the Sacramento River watershed, or a joint powers authority comprised of those contractors, for reimbursement of the costs of the analysis conducted pursuant to this section.

(e) The board shall submit its flow criteria determinations pursuant to this section to the council for its information within 30 days of completing the determinations.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85087.** The board, by December 31, 2010, shall submit to the Legislature a prioritized schedule and estimate of costs to complete instream flow studies for the Delta and for high priority rivers and streams in the Delta watershed, not otherwise covered by Section 85086, by 2012, and for all major rivers and streams outside the Sacramento River watershed by 2018. In developing this schedule, the board shall consult with the Department of Fish and Game as to the timing of its submission of recommendations for instream flow needs.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85088.** Until the board issues an order approving a change in the point of diversion of the State Water Project and the federal Central Valley Project from the southern Delta to a point on the Sacramento River as specified in subdivision (c) of Section 85086, the department shall not commence construction of any diversion, conveyance, or other facility necessary to divert and convey water pursuant to the change in point of diversion.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85089.** Construction of a new Delta conveyance facility shall not be initiated until the persons or entities that contract to receive water from the State Water Project and the federal Central Valley Project or a joint powers authority representing those entities have made arrangements or entered into contracts to pay for both of the following:

(a) The costs of the environmental review, planning, design, construction, and mitigation, including mitigation required pursuant to Division 13 (commencing with Section 21000 of the Public Resources Code), required for

the construction, operation, and maintenance of any new Delta water conveyance facility.

(b) Full mitigation of property tax or assessments levied by local governments or special districts for land used in the construction, location, mitigation, or operation of new Delta conveyance facilities.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

### **PART 3. DELTA GOVERNANCE [85200. - 85280.]**

*(Part 3 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

#### **CHAPTER 1. DELTA STEWARDSHIP COUNCIL [85200. - 85204.]**

*(Chapter 1 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

**§ 85200.** (a) The Delta Stewardship Council is hereby established as an independent agency of the state.

(b) The council shall consist of seven voting members, of which four members shall be appointed by the Governor and confirmed by the Senate, one member shall be appointed by the Senate Committee on Rules, one member shall be appointed by the Speaker of the Assembly, and one member shall be the Chairperson of the Delta Protection Commission. Initial appointments to the council shall be made by July 1, 2010.

(c) (1) (A) The initial terms of two of the four members appointed by the Governor shall be four years.

(B) The initial terms of two of the four members appointed by the Governor shall be six years.

(C) The initial terms of the members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall be four years.

(D) Upon the expiration of each term described in subparagraphs (A), (B), or (C), the term of each succeeding member shall be four years.

(2) The Chairperson of the Delta Protection Commission shall serve as a member of the council for the period during which he or she holds the position as commission chairperson.

(d) Any vacancy shall be filled by the appointing authority within 60 days. If the term of a council member expires, and no successor is appointed within the allotted timeframe, the existing member may serve up to 180 days beyond the expiration of his or her term.

(e) The council members shall select a chairperson from among their members, who shall serve for not more than four years in that capacity.

(f) The council shall meet once a month in a public forum. At least two meetings each year shall take place at a location within the Delta.

*(Amended by Stats. 2013, Ch. 356, Sec. 53. Effective September 26, 2013.)*

**§ 85201.** (a) The chairperson shall serve full time. Other members shall serve one-third time. The council may select a vice chairperson and other officers determined to be necessary.

(b) Each member of the council shall receive the salary provided for in Section 11564 of the Government Code.

(c) The members of the council shall be reimbursed for expenses necessarily incurred in the performance of official duties.

(d) The council shall appoint an executive officer who shall serve full time at the pleasure of the council.

(e) The executive officer shall hire employees necessary to carry out council functions.

(f) The number of employees and qualifications of those employees shall be determined by the council, subject to the availability of funds.

(g) The salary of each employee of the council shall be determined by the State Personnel Board, and shall reflect the duties and responsibilities of the position.

(h) All persons employed by the council are state employees, subject to the duties, responsibilities, limitations, and benefits of the state.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85202.** Council members shall possess diverse expertise and reflect a statewide perspective.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85203.** The headquarters of the council shall be located in Sacramento.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85204.** The council shall establish and oversee a committee of agencies responsible for implementing the Delta Plan. Each agency shall coordinate its actions pursuant to the Delta Plan with the council and the other relevant agencies.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

## **CHAPTER 2. MISSION, DUTIES, AND RESPONSIBILITIES OF THE COUNCIL [85210. - 85214.]**

*(Chapter 2 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

**§ 85210.** The council has all of the following powers:

- (a) To sue or be sued.
- (b) To enter into contracts.
- (c) To employ the services of public, nonprofit, and private entities.
- (d) To delegate administrative functions to council staff.

(e) To employ its own legal staff or contract with other state or federal agencies for legal services, or both. The council may employ special legal counsel with the approval of the Attorney General.

(f) To receive funds, including funds from private and local governmental sources, contributions from public and private sources, as well as state and federal appropriations.

(g) To disburse funds through grants, public assistance, loans, and contracts.

(h) To request reports from state, federal, and local governmental agencies on issues related to the implementation of the Delta Plan.

(i) To adopt regulations or guidelines as needed to carry out the powers and duties identified in this division.

(j) To comment on state agency environmental impact reports for projects outside the Delta that the council determines will have a significant impact on the Delta.

(k) To hold hearings in all parts of the state necessary to carry out the powers vested in it, and for those purposes has the powers conferred upon the heads of state departments pursuant to Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code. Any hearing by the council may be conducted by any member of the council, or other designee, upon authorization of the council, and he or she shall have the powers granted to the council by this section, provided that any final action of the council shall be taken by a majority of the membership of the council at a meeting duly called and held.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85210.5.** A majority of the voting members of the council shall constitute a quorum for the transaction of the business of the council. A majority vote of the voting membership shall be required to take action with respect to any matter unless otherwise specified in this division. The vote of each member shall be individually recorded.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85211.** The Delta Plan shall include performance measurements that will enable the council to track progress in meeting the objectives of the Delta Plan. The performance measurements shall include, but need not be limited to, quantitative or otherwise measurable assessments of the status and trends in all of the following:

(a) The health of the Delta's estuary and wetland ecosystem for supporting viable populations of aquatic and terrestrial species, habitats, and processes, including viable populations of Delta fisheries and other aquatic organisms.

(b) The reliability of California water supply imported from the Sacramento River or the San Joaquin River watershed.

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*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85212.** The council shall review and provide timely advice to local and regional planning agencies regarding the consistency of local and regional planning documents, including sustainable communities strategies and alternative planning strategies prepared pursuant to Section 65080 of the Government Code, with the Delta Plan. The council's input shall include, but not be limited to, reviewing the consistency of local and regional planning documents with the ecosystem restoration needs of the Delta and reviewing whether the lands set aside for natural resource protection are sufficient to meet the Delta's ecosystem needs. A metropolitan planning organization preparing a regional transportation plan under Section 65080 of the Government Code that includes land within the primary or secondary zones of the Delta shall consult with the council early in the planning process regarding the issues and policy choices relating to the council's advice. No later than 60 days prior to the adoption of a final regional transportation plan, the metropolitan planning organization shall provide the council with a draft sustainable communities strategy and an alternative planning strategy, if any. Concurrently, the metropolitan planning organization shall provide notice of its submission to the council in the same manner in which agencies file a certificate of consistency pursuant to Section 85225. If the council concludes that the draft sustainable communities strategy or alternative planning strategy is inconsistent with the Delta Plan, the council shall provide written notice of the claimed inconsistency to the metropolitan planning organization no later than 30 days prior to the adoption of the final regional transportation plan. If the council provides timely notice of a claimed inconsistency, the metropolitan planning organization's adoption of the final regional transportation plan shall include a detailed response to the council's notice.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85213.** (a) The council may contract for consultant services and architectural and engineering services to assist the council with all of the following functions:

- (1) Preparation of the Delta Plan and associated environmental review.
- (2) Performance of the council's responsibilities, or the responsibilities of the Delta Independent Science Board, with respect to the Bay Delta Conservation Plan.
- (3) Determination of the consistency of state and local public agency actions with the Delta Plan.
- (4) Performance of scientific review to inform water and environmental decisionmaking in the Delta.

(b) (1) Contracts entered into pursuant to subdivision (a) for consultant services shall be exempt from Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, Part 2

(commencing with Section 10100) of Division 2 of the Public Contract Code, and any rules or regulations adopted pursuant to those laws. Contracts entered into pursuant to subdivision (a) for architectural and engineering services shall be entered into pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, but are exempt from the requirement in Section 4526 of the Government Code to adopt regulations prior to contracting.

(2) The council shall not enter into a contract pursuant to subdivision (a) for consultant services unless at least three bids or proposals to do the work have been evaluated by a competitive process.

(3) The council shall establish procedures for contracting for services pursuant to subdivision (a), consistent with paragraphs (1) and (2). The procedures shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

*(Added by Stats. 2010, Ch. 336, Sec. 1. Effective September 27, 2010.)*

**§ 85214.** (a) It is the intent of the Legislature to avoid any actual or apparent conflict of interest with respect to contracts entered into by the council for work relating to the Delta Plan and the Bay Delta Conservation Plan.

(b) Therefore, it is the intent of the Legislature that any contract entered into by the council for purposes of developing the Delta Plan should include provisions ensuring the independence of the contractor's work on the Delta Plan with respect to any work that the contractor may do, or may have completed, related to the Bay Delta Conservation Plan.

*(Added by Stats. 2010, Ch. 718, Sec. 25. Effective October 19, 2010.)*

### **CHAPTER 3. CONSISTENCY OF STATE AND LOCAL PUBLIC AGENCY ACTIONS [85225. - 85225.30.]**

*(Chapter 3 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

**§ 85225.** A state or local public agency that proposes to undertake a covered action, prior to initiating the implementation of that covered action, shall prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and shall submit that certification to the council.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85225.5.** To assist state and local public agencies in preparing the required certification, the council shall develop procedures for early consultation with the council on the proposed covered action.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85225.10.** (a) Any person who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action

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will have a significant adverse impact on the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal with regard to a certification of consistency submitted to the council.

(b) The appeal shall clearly and specifically set forth the basis for the claim, including specific factual allegations, that the covered action is inconsistent with the Delta Plan. The council may request from the appellant additional information necessary to clarify, amplify, correct, or otherwise supplement the information submitted with the appeal, within a reasonable period.

(c) The council, or by delegation the executive officer, may dismiss the appeal for failure of the appellant to provide information requested by the council within the period provided, if the information requested is in the possession or under the control of the appellant.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85225.15.** The appeal shall be filed no later than 30 days after the submission of the certification of consistency. If no person appeals the certification of consistency, the state or local public agency may proceed to implement the covered action.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85225.20.** The appeal shall be heard by the council within 60 days of the date of the filing of the appeal, unless the council, or by delegation the executive officer, determines that the issue raised on appeal is not within the council's jurisdiction or does not raise an appealable issue. The council shall make its decision on the appeal within 60 days of hearing the appeal.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85225.25.** After a hearing on an appealed action, the council shall make specific written findings either denying the appeal or remanding the matter to the state or local public agency for reconsideration of the covered action based on the finding that the certification of consistency is not supported by substantial evidence in the record before the state or local public agency that filed the certification. Upon remand, the state or local agency may determine whether to proceed with the covered action. If the agency decides to proceed with the action or with the action as modified to respond to the findings of the council, the agency shall, prior to proceeding with the action, file a revised certification of consistency that addresses each of the findings made by the council and file that revised certification with the council.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85225.30.** The council shall adopt administrative procedures governing appeals, which shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

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*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

#### **CHAPTER 4. DELTA WATERMASTER [85230. - 85230.]**

*(Chapter 4 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

§ 85230. (a) The board, in consultation with the council, shall appoint, for a term of four years, a special master for the Delta, whose title shall be “the Delta Watermaster.”

(b) The board shall adopt internal procedures delegating authority to the Delta Watermaster. The Delta Watermaster shall exercise the board’s authority to provide timely monitoring and enforcement of board orders and license and permit terms and conditions. The Delta Watermaster’s delegated authority shall include authority to require monitoring and reporting, authority for approvals delegated to an officer or employee of the board by the terms of a water right permit or license, authority to approve temporary urgency changes pursuant to Chapter 6.6 (commencing with Section 1435) of Part 2 of Division 2, and authority to issue a notice of a proposed cease and desist order or administrative civil liability complaint. The Delta Watermaster’s authority shall be limited to diversions in the Delta, and for the monitoring and enforcement of the board’s orders and license and permit terms and conditions that apply to conditions in the Delta.

(c) The internal procedures adopted by the board shall provide for due process in adjudicative proceedings, and may establish procedures for the issuance of a stay of any order or decision of the Delta Watermaster for which a petition for reconsideration is filed or reconsideration is ordered under Section 1122. The board may provide any additional duties or needs of the Delta Watermaster that the board deems necessary for effective day-to-day enforcement of its decisions.

(d) The Delta Watermaster shall submit regular reports to the board and the council including, but not limited to, reports on water rights administration, water quality issues, and conveyance operations.

*(Amended by Stats. 2011, Ch. 296, Sec. 317. Effective January 1, 2012.)*

#### **CHAPTER 5. DELTA INDEPENDENT SCIENCE BOARD AND DELTA SCIENCE PROGRAM [85280. - 85280.]**

*(Chapter 5 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

§ 85280. (a) The Delta Independent Science Board is hereby established in state government.

(1) The Delta Independent Science Board shall consist of no more than 10 members appointed by the council. The term of office for members of the Delta Independent Science Board shall be five years. A member may serve no more than two terms.

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(2) Members of the Delta Independent Science Board shall be nationally or internationally prominent scientists with appropriate expertise to evaluate the broad range of scientific programs that support adaptive management of the Delta. The members shall not be directly affiliated with a program or agency subject to the review activities of the Delta Independent Science Board.

(3) The Delta Independent Science Board shall provide oversight of the scientific research, monitoring, and assessment programs that support adaptive management of the Delta through periodic reviews of each of those programs that shall be scheduled to ensure that all Delta scientific research, monitoring, and assessment programs are reviewed at least once every four years.

(4) The Delta Independent Science Board shall submit to the council a report on the results of each review, including recommendations for any changes in the programs reviewed by the board.

(b) After consultation with the Delta Independent Science Board, the council shall appoint a lead scientist for the Delta Science Program.

(1) The lead scientist shall meet all of the following qualifications:

(A) Hold an advanced degree in a field related to water or ecosystem management.

(B) Have a strong record of scientific research and publication in peer-reviewed scientific journals in a field related to water or ecosystem management.

(C) Have experience advising high-level managers in science-based decisionmaking in the areas of water management and ecosystem restoration.

(D) Have the capability to guide the application of an adaptive management process to resource management policy decisions in the Delta.

(2) The term of office for the lead scientist shall be no more than three years. The lead scientist may serve no more than two terms.

(3) The lead scientist shall oversee the implementation of the Delta Science Program. In carrying out that responsibility, the lead scientist shall regularly consult with the agencies participating in the program.

(4) The mission of the Delta Science Program shall be to provide the best possible unbiased scientific information to inform water and environmental decisionmaking in the Delta. That mission shall be carried out through funding research, synthesizing and communicating scientific information to policymakers and decisionmakers, promoting independent scientific peer review, and coordinating with Delta agencies to promote science-based adaptive management. The Delta Science Program shall assist with development and periodic updates of the Delta Plan's adaptive management program.

(c) The Delta Science Program shall function as a replacement for, and successor to, the CALFED Science Program and the Delta Independent Science Board shall replace the CALFED Independent Science Board.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

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**PART 4. COMPREHENSIVE DELTA PLANNING [85300. - 85350.]**

*(Part 4 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

**CHAPTER 1. THE DELTA PLAN [85300. - 85309.]**

*(Chapter 1 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

**§ 85300.** (a) On or before January 1, 2012, the council shall develop, adopt, and commence implementation of the Delta Plan pursuant to this part that furthers the coequal goals. The Delta Plan shall include subgoals and strategies to assist in guiding state and local agency actions related to the Delta. In developing the Delta Plan, the council shall consider each of the strategies and actions set forth in the Strategic Plan and may include any of those strategies or actions in the Delta Plan. The Delta Plan may also identify specific actions that state or local agencies may take to implement the subgoals and strategies.

(b) In developing the Delta Plan, the council shall consult with federal, state, and local agencies with responsibilities in the Delta. All state agencies with responsibilities in the Delta shall cooperate with the council in developing the Delta Plan, upon request of the council.

(c) The council shall review the Delta Plan at least once every five years and may revise it as the council deems appropriate. The council may request any state agency with responsibilities in the Delta to make recommendations with respect to revision of the Delta Plan.

(d) (1) The council shall develop the Delta Plan consistent with all of the following:

(A) The federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), or an equivalent compliance mechanism.

(B) Section 8 of the federal Reclamation Act of 1902.

(C) The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.).

(2) If the council adopts a Delta Plan pursuant to the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the council shall submit the Delta Plan for approval to the United States Secretary of Commerce pursuant to that act, or to any other federal official assigned responsibility for the Delta pursuant to a federal statute enacted after January 1, 2010.

(e) The council shall report to the Legislature no later than March 31, 2012, as to its adoption of the Delta Plan.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85301.** (a) The commission shall develop, for consideration and incorporation into the Delta Plan by the council, a proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place, in a manner consistent with the coequal goals. For the purpose of carrying out this subdivision, the commission may include in the proposal the relevant strategies described in the Strategic Plan.

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(b) (1) The commission shall include in the proposal a plan to establish state and federal designation of the Delta as a place of special significance, which may include application for a federal designation of the Delta as a National Heritage Area.

(2) The commission shall include in the proposal a regional economic plan to support increased investment in agriculture, recreation, tourism, and other resilient land uses in the Delta. The regional economic plan shall include detailed recommendations for the administration of the Delta Investment Fund created by Section 29778.5 of the Public Resources Code.

(c) For the purposes of assisting the commission in its preparation of the proposal, both of the following actions shall be undertaken:

(1) The Department of Parks and Recreation shall prepare a proposal, for submission to the commission, to expand within the Delta the network of state recreation areas, combining existing and newly designated areas. The proposal may incorporate appropriate aspects of any existing plans, including the Central Valley Vision Implementation Plan adopted by the Department of Parks and Recreation.

(2) The Department of Food and Agriculture shall prepare a proposal, for submission to the commission, to establish market incentives and infrastructure to protect and enhance the economic and public values of Delta agriculture.

(d) The commission shall submit the proposal developed pursuant to subdivision (a) to the council. The council shall consider the proposal and may include any portion of the proposal in the Delta Plan if the council, in its discretion, determines that the portion of the proposal is feasible and consistent with the objectives of the Delta Plan and the purposes of this division. *(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85302.** (a) The implementation of the Delta Plan shall further the restoration of the Delta ecosystem and a reliable water supply.

(b) The geographic scope of the ecosystem restoration projects and programs identified in the Delta Plan shall be the Delta, except that the Delta Plan may include recommended ecosystem projects outside the Delta that will contribute to achievement of the coequal goals.

(c) The Delta Plan shall include measures that promote all of the following characteristics of a healthy Delta ecosystem:

- (1) Viable populations of native resident and migratory species.
- (2) Functional corridors for migratory species.
- (3) Diverse and biologically appropriate habitats and ecosystem processes.
- (4) Reduced threats and stresses on the Delta ecosystem.
- (5) Conditions conducive to meeting or exceeding the goals in existing species recovery plans and state and federal goals with respect to doubling salmon populations.

(d) The Delta Plan shall include measures to promote a more reliable water supply that address all of the following:

- (1) Meeting the needs for reasonable and beneficial uses of water.
- (2) Sustaining the economic vitality of the state.
- (3) Improving water quality to protect human health and the environment.

(e) The following subgoals and strategies for restoring a healthy ecosystem shall be included in the Delta Plan:

(1) Restore large areas of interconnected habitats within the Delta and its watershed by 2100.

(2) Establish migratory corridors for fish, birds, and other animals along selected Delta river channels.

(3) Promote self-sustaining, diverse populations of native and valued species by reducing the risk of take and harm from invasive species.

(4) Restore Delta flows and channels to support a healthy estuary and other ecosystems.

(5) Improve water quality to meet drinking water, agriculture, and ecosystem long-term goals.

(6) Restore habitat necessary to avoid a net loss of migratory bird habitat and, where feasible, increase migratory bird habitat to promote viable populations of migratory birds.

(f) The council shall consider, for incorporation into the Delta Plan, actions designed to implement the subgoals and strategies described in subdivision (e).

(g) In carrying out this section, the council shall make use of the best available science.

(h) The Delta Plan shall include recommendations regarding state agency management of lands in the Delta.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85303.** The Delta Plan shall promote statewide water conservation, water use efficiency, and sustainable use of water.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85304.** The Delta Plan shall promote options for new and improved infrastructure relating to the water conveyance in the Delta, storage systems, and for the operation of both to achieve the coequal goals.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85305.** (a) The Delta Plan shall attempt to reduce risks to people, property, and state interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and strategic levee investments.

(b) The council may incorporate into the Delta Plan the emergency preparedness and response strategies for the Delta developed by the California Emergency Management Agency pursuant to Section 12994.5.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

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**§ 85306.** The council, in consultation with the Central Valley Flood Protection Board, shall recommend in the Delta Plan priorities for state investments in levee operation, maintenance, and improvements in the Delta, including both levees that are a part of the State Plan of Flood Control and nonproject levees. *(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85307.** (a) The Delta Plan may identify actions to be taken outside of the Delta, if those actions are determined to significantly reduce flood risks in the Delta.

(b) The Delta Plan may include local plans of flood protection.

(c) The council, in consultation with the Department of Transportation, may address in the Delta Plan the effects of climate change and sea level rise on the three state highways that cross the Delta.

(d) The council, in consultation with the State Energy Resources Conservation and Development Commission and the Public Utilities Commission, may incorporate into the Delta Plan additional actions to address the needs of Delta energy development, energy storage, and energy distribution.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85308.** The Delta Plan shall meet all of the following requirements:

(a) Be based on the best available scientific information and the independent science advice provided by the Delta Independent Science Board.

(b) Include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan.

(c) Where appropriate, utilize monitoring, data collection, and analysis of actions sufficient to determine progress toward meeting the quantified targets.

(d) Describe the methods by which the council shall measure progress toward achieving the coequal goals.

(e) Where appropriate, recommend integration of scientific and monitoring results into ongoing Delta water management.

(f) Include a science-based, transparent, and formal adaptive management strategy for ongoing ecosystem restoration and water management decisions.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85309.** The department, in consultation with the United States Army Corps of Engineers and the Central Valley Flood Protection Board, shall prepare a proposal to coordinate flood and water supply operations of the State Water Project and the federal Central Valley Project, and submit the proposal to the council for consideration for incorporation into the Delta Plan. In drafting the proposal, the department shall consider all related actions set forth in the Strategic Plan.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

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**CHAPTER 2. BAY DELTA CONSERVATION PLAN [85320. - 85322.]**

*(Chapter 2 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

**§ 85320.** (a) The Bay Delta Conservation Plan (BDCP) shall be considered for inclusion in the Delta Plan in accordance with this chapter.

(b) The BDCP shall not be incorporated into the Delta Plan and the public benefits associated with the BDCP shall not be eligible for state funding, unless the BDCP does all of the following:

(1) Complies with Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code.

(2) Complies with Division 13 (commencing with Section 21000) of the Public Resources Code, including a comprehensive review and analysis of all of the following:

(A) A reasonable range of flow criteria, rates of diversion, and other operational criteria required to satisfy the criteria for approval of a natural community conservation plan as provided in subdivision (a) of Section 2820 of the Fish and Game Code, and other operational requirements and flows necessary for recovering the Delta ecosystem and restoring fisheries under a reasonable range of hydrologic conditions, which will identify the remaining water available for export and other beneficial uses.

(B) A reasonable range of Delta conveyance alternatives, including through-Delta, dual conveyance, and isolated conveyance alternatives and including further capacity and design options of a lined canal, an unlined canal, and pipelines.

(C) The potential effects of climate change, possible sea level rise up to 55 inches, and possible changes in total precipitation and runoff patterns on the conveyance alternatives and habitat restoration activities considered in the environmental impact report.

(D) The potential effects on migratory fish and aquatic resources.

(E) The potential effects on Sacramento River and San Joaquin River flood management.

(F) The resilience and recovery of Delta conveyance alternatives in the event of catastrophic loss caused by earthquake or flood or other natural disaster.

(G) The potential effects of each Delta conveyance alternative on Delta water quality.

(c) The department shall consult with the council and the Delta Independent Science Board during the development of the BDCP. The council shall be a responsible agency in the development of the environmental impact report. The Delta Independent Science Board shall review the draft environmental impact report and submit its comments to the council and the Department of Fish and Game.

(d) If the Department of Fish and Game approves the BDCP as a natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code, the council shall have at least one public hearing concerning the incorporation of the BDCP into the Delta Plan.

(e) If the Department of Fish and Game approves the BDCP as a natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code and determines that the BDCP meets the requirements of this section, and the BDCP has been approved as a habitat conservation plan pursuant to the federal Endangered Species Act (16 U.S.C. Section 1531 et seq.), the council shall incorporate the BDCP into the Delta Plan. The Department of Fish and Game's determination that the BDCP has met the requirements of this section may be appealed to the council.

(f) The department, in coordination with the Department of Fish and Game, or any successor agencies charged with BDCP implementation, shall report to the council on the implementation of the BDCP at least once a year, including the status of monitoring programs and adaptive management.

(g) The council may make recommendations to BDCP implementing agencies regarding the implementation of the BDCP. BDCP implementing agencies shall consult with the council on these recommendations. These recommendations shall not change the terms and conditions of the permits issued by state and federal regulatory agencies.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85321.** The BDCP shall include a transparent, real-time operational decisionmaking process in which fishery agencies ensure that applicable biological performance measures are achieved in a timely manner with respect to water system operations.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

**§ 85322.** This chapter does not amend, or create any additional legal obligation or cause of action under, Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code or Division 13 (commencing with Section 21000) of the Public Resources Code.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

### **CHAPTER 3. OTHER PLANS FOR THE DELTA [85350. - 85350.]**

*(Chapter 3 added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39.)*

**§ 85350.** The council may incorporate other completed plans related to the Delta into the Delta Plan to the extent that the other plans promote the coequal goals.

*(Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010.)*

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**PUBLIC RESOURCES CODE**  
**DIVISION 10. STREAMFLOW PROTECTION STANDARDS**  
**[10000 - 10005]**

*(Division 10 added by Stats. 1982, Ch. 1478, Sec. 1.)*

**§ 10000.** The Legislature finds and declares as follows:

(a) A substantial increase has occurred in the number of requests to appropriate water from the various streams and watercourses of this state, especially for the purpose of generating electric energy.

(b) These requests, if approved without due regard for their cumulative effect on streamflows, could adversely affect, to a serious and significant degree, the fish and wildlife resources dependent on those streams and watercourses.

(c) These fish and wildlife resources are important for the entire state and are inextricably linked to the continued economic viability of industries, such as the fishing industry, which are desirable and important components of the state's economy.

*(Added by Stats. 1982, Ch. 1478, Sec. 1.)*

**§ 10001.** The Director of Fish and Game shall identify and list those streams and watercourses throughout the state for which minimum flow levels need to be established in order to assure the continued viability of stream-related fish and wildlife resources. The director shall include in this identification list those streams and watercourses the director determines are significant, along with a statement of findings as to why that stream or watercourse was selected. The identification list required by this section shall rank the streams and watercourses beginning with those where the need for establishing minimum flow levels is the greatest. The director, at his discretion, may revise the list and may add or delete streams or watercourses as circumstances require. The initial identification list required by this section shall be completed no later than January 1, 1984.

*(Added by Stats. 1982, Ch. 1478, Sec. 1.)*

**§ 10002.** The Director of Fish and Game shall prepare proposed streamflow requirements, which shall be specified in terms of cubic feet of water per second, for each stream or watercourse identified pursuant to Section 10001. In developing the requirements for each stream, the director shall consult with the Director of Water Resources, the Director of Parks and Recreation and with all affected local governments. The Director of Fish and Game may also consult with any private individuals, groups, or organizations as the director deems advisable. Upon completion of the proposed streamflow requirements for any individual stream or watercourse, the Director of Fish and Game shall transmit

these proposed requirements to the State Water Resources Control Board. The State Water Resources Control Board shall consider these requirements within a stream as set forth in Section 1257.5 of the Water Code. The Director of Fish and Game shall complete the preparation of proposed requirements for the initial streams not later than July 1, 1989.

The Department of Fish and Game may contract for temporary services for purposes of preparing the proposed streamflow requirements.

*(Amended by Stats. 2013, Ch. 352, Sec. 482. Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)*

**§ 10003.** The Director of Fish and Game, on his or her own motion or at the request of the State Water Resources Control Board, may review any streamflow requirement and may propose revision or modification thereof. The proposed revision or modification shall be transmitted to the State Water Resources Control Board.

*(Amended by Stats. 1985, Ch. 1259, Sec. 2.)*

**§ 10004.** The Department of Fish and Game shall initiate studies to develop proposed streamflow requirements for those streams or watercourses in each fiscal year for which funds are appropriated and shall complete studies on each stream or watercourse within three years. It is the intent of the Legislature that the department develop a program that will initiate studies on at least 10 streams or watercourses in each fiscal year.

*(Added by Stats. 1985, Ch. 1259, Sec. 3.)*

**§ 10005.** (a) The Department of Fish and Game shall impose and collect a filing fee of eight hundred fifty dollars (\$850) to defray the costs of identifying streams and providing studies pursuant to Division 10 (commencing with Section 10000) of the Public Resources Code.

(b) The filing fee shall be proportional to the cost incurred by the Department of Fish and Game and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the costs of the Department of Fish and Game as specified in subdivision (a).

(c) Any user of water, including a person or entity holding riparian or appropriative rights, shall pay the filing fee to the Department of Fish and Game upon application to the State Water Resources Control Board for any permit, transfer, extension, or change of point of diversion, place of use, or purpose of use, if there is a diversion of water from any waterway where fish reside. No permit, or other entitlement identified in this section is effective until the filing fee is paid. The State Water Resources Control Board shall, every six months, forward all fees collected to the department and provide the location for each entitlement for which a filing fee has been collected.

(d) The fee imposed by this section shall not be imposed on the following applications filed with the State Water Resources Control Board:

(1) Small domestic use registrations and livestock stockpond certificates submitted pursuant to Article 2.7 (commencing with Section 1228) of Chapter 2 of Division 2 of the Water Code.

(2) The first application for an extension of time for an individual permit if no change in point of diversion, place of use, or purpose of use is included in the application.

(3) Water applications which, in the opinion of the Department of Fish and Game, are filed for administrative and technical clarification purposes only.

(4) Water applications or petitions, the primary purpose of which is to benefit fish and wildlife resources. The determination of the benefit to fish and wildlife shall be made, in writing, by the Department of Fish and Game in order to be exempt from the fee.

(e) If an applicant or petitioner files multiple applications or petitions for the same appropriation, transfer, extension, or change, and the State Water Resources Control Board reviews and considers the applications or petitions together, only one filing fee is required for those applications or petitions.

*(Amended by Stats. 2001, Ch. 398, Sec. 7. Effective January 1, 2002.)*

## **FISH AND GAME CODE**

### **DIVISION 2. DEPARTMENT OF FISH AND WILDLIFE [700 - 1940]**

*(Heading of Division 2 amended by Stats. 2015, Ch. 154, Sec. 21.)*

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#### **CHAPTER 6. FISH AND WILDLIFE PROTECTION AND CONSERVATION [1600 - 1616]**

*(Chapter 6 repealed and added by Stats. 2003, Ch. 736, Sec. 2.)*

**§ 1600.** The Legislature finds and declares that the protection and conservation of the fish and wildlife resources of this state are of utmost public interest. Fish and wildlife are the property of the people and provide a major contribution to the economy of the state, as well as providing a significant part of the people's food supply; therefore their conservation is a proper responsibility of the state. This chapter is enacted to provide conservation for these resources.

*(Repealed and added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

**§ 1601.** The following definitions apply to this chapter:

(a) "Agreement" means a lake or streambed alteration agreement.

(b) "Day" means calendar day.

(c) "Emergency" has the same definition as in Section 21060.3 of the Public Resources Code.

(d) "Entity" means any person, state or local governmental agency, or public utility that is subject to this chapter.

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*(Repealed and added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

**§ 1602.** (a) An entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless all of the following occur:

(1) The department receives written notification regarding the activity in the manner prescribed by the department. The notification shall include, but is not limited to, all of the following:

(A) A detailed description of the project's location and a map.

(B) The name, if any, of the river, stream, or lake affected.

(C) A detailed project description, including, but not limited to, construction plans and drawings, if applicable.

(D) A copy of any document prepared pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(E) A copy of any other applicable local, state, or federal permit or agreement already issued.

(F) Any other information required by the department.

(2) The department determines the notification is complete in accordance with Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, irrespective of whether the activity constitutes a development project for the purposes of that chapter.

(3) The entity pays the applicable fees, pursuant to Section 1609.

(4) One of the following occurs:

(A)

(i) The department informs the entity, in writing, that the activity will not substantially adversely affect an existing fish or wildlife resource, and that the entity may commence the activity without an agreement, if the entity conducts the activity as described in the notification, including any measures in the notification that are intended to protect fish and wildlife resources.

(ii) Each region of the department shall log the notifications of activities where no agreement is required. The log shall list the date the notification was received by the department, a brief description of the proposed activity, and the location of the activity. Each item shall remain on the log for one year. Upon written request by any person, a regional office shall send the log to that person monthly for one year. A request made pursuant to this clause may be renewed annually.

(B) The department determines that the activity may substantially adversely affect an existing fish or wildlife resource and issues a final agreement to the entity that includes reasonable measures necessary to protect the resource, and the entity conducts the activity in accordance with the agreement.

(C) A panel of arbitrators issues a final agreement to the entity in accordance with subdivision (b) of Section 1603, and the entity conducts the activity in accordance with the agreement.

(D) The department does not issue a draft agreement to the entity within 60 days from the date notification is complete, and the entity conducts the activity as described in the notification, including any measures in the notification that are intended to protect fish and wildlife resources.

(b) (1) If an activity involves the routine maintenance and operation of water supply, drainage, flood control, or waste treatment and disposal facilities, notice to and agreement with the department shall not be required after the initial notification and agreement, unless the department determines either of the following:

(A) The work described in the agreement has substantially changed.

(B) Conditions affecting fish and wildlife resources have substantially changed, and those resources are adversely affected by the activity conducted under the agreement.

(2) This subdivision applies only if notice to, and agreement with, the department was attained prior to January 1, 1977, and the department has been provided a copy of the agreement or other proof of the existence of the agreement that satisfies the department, if requested.

(c) It is unlawful for any person to violate this chapter.

*(Repealed and added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

**§ 1603.** (a) After the notification is complete, the department shall determine whether the activity may substantially adversely affect an existing fish and wildlife resource. If the department determines that the activity may have that effect, the department shall provide a draft agreement to the entity within 60 days after the notification is complete. The draft agreement shall describe the fish and wildlife resources that the department has determined the activity may substantially adversely affect and include measures to protect those resources. The department's description of the affected resources shall be specific and detailed, and the department shall make available, upon request, the information upon which its determination of substantial adverse effect is based. Within 30 days of the date of receipt of the draft agreement, the entity shall notify the department whether the measures to protect fish and wildlife resources in that draft agreement are acceptable. If the department's measures are not acceptable, the entity shall so notify the department in writing and specify the measures that are not acceptable. Upon written request, the department shall meet with the entity within 14 days of the date the department receives the request for the purpose of resolving any disagreement regarding those measures. If the entity fails to respond, in writing, within 90 days of receiving the draft agreement, the department may withdraw that

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agreement, and require the entity to resubmit a notification to the department before commencing the activity.

(b) If mutual agreement is not reached at any meeting held pursuant to subdivision (a), the entity may request, in writing, the appointment of a panel of arbitrators to resolve the disagreement. A panel of arbitrators shall be appointed within 14 days of receipt of the written request. The panel of arbitrators shall be comprised of three persons, as follows: one representative selected by the department; one representative selected by the affected entity; and a third person mutually agreed upon by the department and the entity, who shall serve as the panel chair. If the department and the entity cannot agree on the third person within that 14-day period, the third person shall be appointed in the manner provided by Section 1281.6 of the Code of Civil Procedure. The third person shall have scientific expertise relevant to the fish and wildlife resources that may be substantially adversely affected by the activity proposed by the entity and to the measures proposed by the department to protect those resources. The authority of the panel of arbitrators is limited to resolving disagreements regarding the measures specified in subdivision (a), and subdivisions (b) and (g) of Section 1605, and, in the case of an extension, whether or not the agreement needs to be modified to protect fish and wildlife resources. Any decision by the panel of arbitrators shall be issued within 14 days from the date the panel was established, shall be binding on the department and the affected entity, shall be based on the best scientific information reasonably available at the time of the arbitration, and, except for a decision to extend an agreement without modification, shall be made in the form of a final agreement. The final agreement issued by the panel shall also include, without modification, all measures that were not subject to arbitration. Each party shall pay the expenses of their selected representative and pay one-half the expenses of the third person.

*(Repealed and added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

**§ 1604.** Any party affected by a decision made by an arbitration panel pursuant to this chapter may petition a court of competent jurisdiction for confirmation, correction, or vacation of the decision in accordance with Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

*(Repealed and added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

**§ 1605.** (a) (1) Except as otherwise provided in this section, the term of an agreement shall not exceed five years.

(2) Notwithstanding paragraph (1), after the agreement expires, the entity shall remain responsible for implementing any mitigation or other measures specified in the agreement to protect fish and wildlife resources.

(b) Any entity may request one extension of a previously-approved agreement, if the entity requests the extension prior to the expiration of its original term. The department shall grant the extension unless it determines that the agreement requires modification because the measures contained in the agreement no longer protect the fish and wildlife resources that the activity may substantially adversely affect. In the event the department makes that determination, the department shall propose measures intended to protect those resources.

(c) If the entity disagrees with the department's determination that the agreement requires modification to protect fish and wildlife resources or with the measures proposed by the department, the disagreement shall be resolved pursuant to the procedures described in subdivision (b) of Section 1603.

(d) The department may not extend an agreement for more than five years.

(e) (1) An original agreement shall remain in effect until the department grants the extension request, or new measures are imposed to protect fish and wildlife resources by agreement or through the arbitration process.

(2) Notwithstanding paragraph (1), an original agreement may not remain in effect for more than one year after its expiration date.

(f) If the entity fails to submit a request to extend an agreement prior to its expiration, the entity shall submit a new notification before commencing or continuing the activity covered by the agreement.

(g) Notwithstanding paragraph (1) of subdivision (a), the department may issue an agreement, that otherwise meets the requirements of this chapter, for a term longer than five years if the following conditions are satisfied:

(1) The information the entity provides to the department in its notification meets the requirements of paragraph (1) of subdivision (a) of Section 1602.

(2) The entity agrees to provide a status report to the department every four years. The status report shall be delivered to the department no later than 90 days prior to the end of each four-year period, and shall include all of the following information:

(A) A copy of the original agreement.

(B) The status of the activity covered by the agreement.

(C) An evaluation of the success or failure of the measures in the agreement to protect the fish and wildlife resources that the activity may substantially adversely affect.

(D) A discussion of any factors that could increase the predicted adverse impacts on fish and wildlife resources, and a description of the resources that may be adversely affected.

(3) The department shall review the four-year status report, and conduct an onsite inspection to confirm that the entity is in compliance with the agreement and that the measures in the agreement continue to protect the fish and wildlife resources. If the department determines that the measures in the agreement no longer protect the fish and wildlife resources that are being substantially

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adversely affected by the activity, the department, in consultation with the entity, and within 45 days of receipt of the report, shall impose one or more new measures to protect the fish and wildlife resources affected by the activity. If requested to do so by the entity, the department shall make available the information upon which it determined the agreement no longer protects the affected fish and wildlife resources. If the entity disagrees with one or more of the new measures, within seven days of receiving the new measures, it shall notify the department, in writing, of the disagreement. The entity and the department shall consult regarding the disagreement. The consultation shall be completed within seven days after the department receives the entity's notice of disagreement. If the department and entity fail to reach agreement, the entity may request, in writing, the appointment of a panel of arbitrators to resolve the disagreement. The panel of arbitrators shall be appointed within 14 days of the completed consultation. The panel of arbitrators shall issue a decision within 14 days of the date it is established. All other provisions of subdivision (b) of Section 1603 regarding the panel shall apply to any arbitration panel established in accordance with this subdivision. If the entity fails to provide timely status reports as required by this subdivision, the department may suspend or revoke the agreement.

(4) The agreement shall authorize department employees to conduct onsite inspections relevant to the agreement, upon reasonable notice. Nothing in this section limits the authority of department employees to inspect private or public sites.

(5) Except as provided in paragraph (3), subparagraph (D) of paragraph (4) of subdivision (a) of Section 1602 and the time periods to process agreements specified in this chapter do not apply to agreements issued pursuant to this section.

(h) Each region of the department shall log the notifications of activities for which a long-term agreement is being considered pursuant to subdivision (g). The log shall list the date the notification was received by the department, a brief description of the proposed activity, and the location of the activity. Each item shall remain on the log for one year. Upon written request by any person, a regional office shall send the log to that person monthly for one year. A request made pursuant to this paragraph may be renewed annually.

*(Repealed and added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

**§ 1606.** The department shall not condition the issuance of an agreement on the receipt of another local, state, or federal permit.

*(Repealed and added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

**§ 1607.** Any time period prescribed in this chapter may be extended by mutual agreement.

*(Repealed and added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

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**§ 1608.** The department shall provide any entity that submits a notification pursuant to Section 1602 with all of the following information:

- (a) The time period for review of the notification.
  - (b) An explanation of the entity's right to object to any measures proposed by the department.
  - (c) The time period within which objections may be made in writing to the department.
  - (d) The time period within which the department is required to respond, in writing, to the entity's objections.
  - (e) An explanation of the right of the entity to arbitrate any measures in a draft agreement.
  - (f) The procedures and statutory timelines for arbitration, including, but not limited to, information about the payment requirements for arbitrator fees.
  - (g) The current schedule of fees to obtain an agreement.
- (Added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

**§ 1609.** (a) The director may establish a graduated schedule of fees to be charged to any entity subject to this chapter. The fees charged shall be established in an amount necessary to pay the total costs incurred by the department in administering and enforcing this chapter, including, but not limited to, preparing and submitting agreements and conducting inspections. The department may adjust the fees pursuant to Section 713. Fees received pursuant to this section shall be deposited in the Fish and Game Preservation Fund.

- (b) (1) The fee schedule established pursuant to subdivision (a) may not impose a fee that exceeds five thousand dollars (\$5,000) for any agreement.
  - (2) The fee limitation described in paragraph (1) does not apply to any agreement issued pursuant to subdivision (g) of Section 1605.
- (Added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

**§ 1610.** (a) Except as provided in subdivision (b), this chapter does not apply to any of the following:

- (1) Immediate emergency work necessary to protect life or property.
- (2) Immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in an area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.
- (3) Emergency projects undertaken, carried out, or approved by a state or local governmental agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, within the existing right-of-way of the highway, that has been damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one

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year of the damage. Work needed in the vicinity above and below a highway may be conducted outside of the existing right-of-way if it is needed to stop ongoing or recurring mudslides, landslides, or erosion that pose an immediate threat to the highway, or to restore those roadways damaged by mudslides, landslides, or erosion to their predamage condition and functionality. This paragraph does not exempt from this chapter any project undertaken, carried out, or approved by a state or local governmental agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide. The exception provided in this paragraph does not apply to a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code.

(b) The entity performing the emergency work described in subdivision (a) shall notify the department of the work, in writing, within 14 days of beginning the work. Any work described in the emergency notification that does not meet the criteria for the emergency work described in subdivision (a) is a violation of this chapter if the entity did not first notify the department in accordance with Section 1602.

*(Added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

**§ 1611.** (a) An entity that submits a timber harvesting plan in accordance with Section 4581 of the Public Resources Code or directly to the department is deemed to have given the notification required by Section 1602, as long as the following information is included in the plan:

- (1) The volume, type, and equipment to be used in removing or displacing any one or combination of soil, sand, gravel, or boulders.
  - (2) The volume of water, intended use, and equipment to be used in any water diversion or impoundment, if applicable.
  - (3) The equipment to be used in road or bridge construction.
  - (4) The type and density of vegetation to be affected and an estimate of the area involved.
  - (5) A diagram or sketch of the location of the operation that clearly indicates the stream or other water and access from a named public road. Locked gates shall be indicated and the compass direction shall be shown.
  - (6) A description of the period of time in which operations will be carried out.
- (b) Notwithstanding subdivision (a), the department is not required to determine whether the notification is complete or otherwise process the notification until the timber harvesting plan and the proper notification fee have both been received by the department.
- (c) Nothing in this section requires the department to issue an agreement fewer than 60 days from the date the notification is complete.

(d) The date on which the term of an agreement issued pursuant to this section begins shall be the date timber operations first commence, unless the agreement specifies a later beginning date.

*(Added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

**§ 1612.** The department may suspend or revoke an agreement at any time if it determines that an entity is not in compliance with the terms of the agreement or fails to provide timely status reports as required by subdivision (g) of Section 1605. The department shall adopt regulations establishing the procedure for suspension or revocation of an agreement. The procedure shall require the department to provide to the entity a written notice that explains the basis for a suspension or revocation, and to provide the entity with an opportunity to correct any deficiency before the department suspends or revokes the agreement.

*(Added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

**§ 1613.** If, after receiving a notification, but before the department executes a final agreement, the director of the department informs the entity, in writing, that the activity described in the notification, or any activity or conduct by the entity directly related thereto, violates any provision of this code or the regulations that implement the code, the department may suspend processing the notification, and subparagraph (D) of paragraph (4) of subdivision (a) of Section 1602 and the timelines specified in Section 1603 do not apply. This section ceases to apply if any of the following occurs:

- (a) The department determines that the violation has been remedied.
- (b) Legal action to prosecute the violation is not filed within the applicable statute of limitations.
- (c) Legal action to prosecute the violation has been terminated.

*(Amended by Stats. 2004, Ch. 183, Sec. 112. Effective January 1, 2005.)*

**§ 1614.** If the entity is required to perform work subject to this chapter pursuant to a court or administrative order or notice, the entity shall include the measures proposed by the department to protect fish and wildlife resources in the agreement. Those measures are not subject to arbitration.

*(Added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

**§ 1615.** (a) A person who violates this chapter is subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation.

(b) The civil penalty imposed pursuant to subdivision (a) is separate from, and in addition to, any other civil penalty imposed pursuant to this section or any other provision of the law.

(c) In determining the amount of any civil penalty imposed pursuant to this section, the court shall take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the

violation. In making this determination, the court may consider the degree of toxicity and volume of the discharge, the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and, with respect to the defendant, the ability to pay, the effect of any civil penalty on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and any other matters the court determines that justice may require.

(d) Every civil action brought under this section shall be brought by the Attorney General upon complaint by the department, or by the district attorney or city attorney in the name of the people of the State of California, and any actions relating to the same violation may be joined or consolidated.

(e) (1) In any civil action brought pursuant to this chapter in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any stage of the proceeding any of the following:

(A) That irreparable damage will occur if the temporary restraining order, preliminary injunction, or permanent injunction is not issued.

(B) That the remedy at law is inadequate.

(2) The court shall issue a temporary restraining order, preliminary injunction, or permanent injunction in a civil action brought pursuant to this chapter without the allegations and without the proof specified in paragraph (1).

(f) All civil penalties collected pursuant to this section shall not be considered fines or forfeitures as defined in Section 13003, and shall be apportioned in the following manner:

(1) Fifty percent shall be distributed to the county treasurer of the county in which the action is prosecuted. Amounts paid to the county treasurer shall be deposited in the county fish and wildlife propagation fund established pursuant to Section 13100.

(2) Fifty percent shall be distributed to the department for deposit in the Fish and Game Preservation Fund. These funds may be expended to cover the costs of any legal actions or for any other law enforcement purpose consistent with Section 9 of Article XVI of the California Constitution.

*(Added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

**§ 1616.** Any agreement or any memorandum of understanding executed by the department pursuant to this chapter prior to January 1, 2004, shall be subject to, and shall be governed by, the provisions of this chapter that were in existence prior to that date. This section does not apply to paragraph (2) of subdivision (b) of Section 1602, requiring an entity to provide a copy or other satisfactory evidence of an agreement attained prior to January 1, 1977, upon the request of the department.

*(Added by Stats. 2003, Ch. 736, Sec. 2. Effective January 1, 2004.)*

## **DIVISION 6. FISH [5500 - 9101]**

*(Division 6 enacted by Stats. 1957, Ch. 456.)*

### **PART 1. GENERALLY [5500 - 6956]**

*(Part 1 enacted by Stats. 1957, Ch. 456.)*

#### **CHAPTER 3. DAMS, CONDUITS, AND SCREENS [5900 - 6100]**

*(Chapter 3 enacted by Stats. 1957, Ch. 456.)*

#### **Article 2. Dams and Obstructions [5930 - 5948]**

*(Article 2 enacted by Stats. 1957, Ch. 456.)*

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**§ 5937.** The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. During the minimum flow of water in any river or stream, permission may be granted by the department to the owner of any dam to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below the dam, when, in the judgment of the department, it is impracticable or detrimental to the owner to pass the water through the fishway.

*(Enacted by Stats. 1957, Ch. 456.)*

\* \* \*

**§ 5943.** (a) The owner of a dam shall accord to the public for the purpose of fishing, the right of access to the waters impounded by the dam during the open season for the taking of fish in the stream or river, subject to the regulations of the commission.

(b) Subdivision (a) does not apply to any impoundment of water by a dam that is wholly located on privately owned land that is primarily agricultural or residential in nature if the impounded waters are from a stream or river that is not naturally frequented by fish and if the dam does not prevent the free passage of fish over or around the dam. The Legislature finds and declares that this subdivision is intended to be declaratory of existing law.

*(Amended by Stats. 1996, Ch. 273, Sec. 1. Effective January 1, 1997.)*

\* \* \*

**§ 5946.** The provisions of Section 5938 shall not be applicable to dams constructed in District 41/2 after September 9, 1953.

No permit or license to appropriate water in District 41/2 shall be issued by the State Water Rights Board after September 9, 1953, unless conditioned upon full

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compliance with Section 5937. Plans and specifications for any such dam shall not be approved by the Department of Water Resources unless adequate provision is made for full compliance with Section 5937.

*(Amended by Stats. 1957, Ch. 1932.)*

**§ 5947.** It is unlawful for the owner of a dam in District 41/2 to release water from the dam, or any facilities for the generation of hydroelectric energy operated in connection therewith, in varying flows in such a manner as to destroy fish life below such release.

*(Enacted by Stats. 1957, Ch. 456.)*

**§ 5948.** No person shall cause or having caused, permit to exist any log jam or debris accumulation or any other artificial barrier, except a dam for the storage or diversion of water, public bridges and approaches thereto, groins, jetties, seawalls, breakwaters, bulkheads, wharves and piers permitted by law, and debris from mining operations, in any stream in this State, which will prevent the passing of fish up and down stream or which is deleterious to fish as determined by the commission, subject to review by the courts.

*(Amended by Stats. 1957, Ch. 2039.)*

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#### **Article 4. Effect of Reduced Water Flows [6930- 6930.]**

*(Article 4 added by Stats. 2002, Ch. 985, Sec. 1.)*

**§ 6930.** (a) Subject to the availability of funds for the purposes of this section, the department shall contract with the University of California to conduct a study of the effects that reduced waterflows at the mouths and upstream estuaries of rivers selected under subdivision (b) would have on existing salmon and steelhead populations and on existing or prospective salmon and steelhead population restoration or reintroduction programs.

(b) The department shall select the rivers to be included in the study and shall limit its selection to rivers that are within the combined river systems described in paragraph (7) of subdivision (a) of Section 1215.5 of the Water Code, and that are the subject of an application that has been filed with the State Water Resources Control Board to appropriate water in an amount equal to more than three cubic feet per second or more than 500 acre feet per annum of storage, involving the delivery of water by means other than a pipeline, natural watercourse, well, or aqueduct to any place of use that is outside of the protected area described in paragraph (7) of subdivision (a) of Section 1215.5 of the Water Code.

(c) The findings of the study conducted under this section shall be a factor in any decision of the State Water Resources Control Board to approve or deny an application to appropriate water from any river selected under this section. If the application involves the delivery of water, by means other than a pipeline,

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natural watercourse, well, or aqueduct, to any place of use that is outside of the protected area described in paragraph (7) of subdivision (a) of Section 1215.5 of the Water Code, the board may not approve that application until after the study has been completed.

(d) Any study conducted pursuant to this section shall conclude within five years of the start of that study.

(e) This section applies to the University of California only if the Regents of the University of California, by resolution, make it applicable to the university.

*(Amended by Stats. 2003, Ch. 681, Sec. 1. Effective January 1, 2004.)*



CALIFORNIA  
**Water Boards**  
 STATE WATER RESOURCES CONTROL BOARD  
 REGIONAL WATER QUALITY CONTROL BOARDS

1001 I Street, Sacramento, CA 95814 • P.O. Box 100, Sacramento, CA 95812-0100 • Email: [info@waterboards.ca.gov](mailto:info@waterboards.ca.gov) • [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

OFFICE OF PUBLIC AFFAIRS (916) 341-5254	OFFICE OF LEGISLATIVE AFFAIRS (916) 341-5251	OFFICE OF THE OMBUDSMAN (916) 341-5254	WATER QUALITY INFORMATION (916) 341-5455	WATER RIGHTS INFORMATION (916) 341-5300	FINANCIAL ASSISTANCE INFORMATION (916) 341-5700
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## CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS

### NORTH COAST (1)

[www.waterboards.ca.gov/northcoast](http://www.waterboards.ca.gov/northcoast)

5550 Skylane Blvd., Suite A  
 Santa Rosa, CA 95403  
 Email: [info1@waterboards.ca.gov](mailto:info1@waterboards.ca.gov)  
 (707) 576-2220 TEL  
 (707) 523-0135 FAX

### SAN FRANCISCO BAY (2)

[www.waterboards.ca.gov/sanfranciscobay](http://www.waterboards.ca.gov/sanfranciscobay)

1515 Clay Street, Suite 1400  
 Oakland, CA 94612  
 Email: [info2@waterboards.ca.gov](mailto:info2@waterboards.ca.gov)  
 (510) 622-2300 TEL  
 (510) 622-2460 FAX

### CENTRAL COAST (3)

[www.waterboards.ca.gov/centralcoast](http://www.waterboards.ca.gov/centralcoast)

895 Aerovista Place, Suite 101  
 San Luis Obispo, CA 93401  
 Email: [info3@waterboards.ca.gov](mailto:info3@waterboards.ca.gov)  
 (805) 549-3147 TEL  
 (805) 543-0397 FAX

### LOS ANGELES (4)

[www.waterboards.ca.gov/losangeles](http://www.waterboards.ca.gov/losangeles)

320 W. 4th Street, Suite 200  
 Los Angeles, CA 90013  
 Email: [info4@waterboards.ca.gov](mailto:info4@waterboards.ca.gov)  
 (213) 576-6600 TEL  
 (213) 576-6640 FAX

### CENTRAL VALLEY (5)

[www.waterboards.ca.gov/centralvalley](http://www.waterboards.ca.gov/centralvalley)

11020 Sun Center Drive, Suite 200  
 Rancho Cordova, CA 95670  
 Email: [info5@waterboards.ca.gov](mailto:info5@waterboards.ca.gov)  
 (916) 464-3291 TEL  
 (916) 464-4645 FAX

- **Fresno Office**  
 1685 E Street, Suite 200  
 Fresno, CA 93706  
 (559) 445-5116 TEL  
 (559) 445-5910 FAX

- **Redding Office**  
 364 Knollcrest Drive, Suite 205  
 Redding, CA 96002  
 (530) 224-4845 TEL  
 (530) 224-4857 FAX

### LAHONTAN (6)

[www.waterboards.ca.gov/lahontan](http://www.waterboards.ca.gov/lahontan)

2501 Lake Tahoe Blvd.  
 South Lake Tahoe, CA 96150  
 Email: [info6@waterboards.ca.gov](mailto:info6@waterboards.ca.gov)  
 (530) 542-5400 TEL  
 (530) 544-2271 FAX

- **Victorville Office**

14440 Civic Drive, Suite 200  
 Victorville, CA 92392  
 (760) 241-6583 TEL  
 (760) 241-7308 FAX

### COLORADO RIVER BASIN (7)

[www.waterboards.ca.gov/coloradriver](http://www.waterboards.ca.gov/coloradriver)

73-720 Fred Waring Dr., Suite 100  
 Palm Desert, CA 92260  
 Email: [info7@waterboards.ca.gov](mailto:info7@waterboards.ca.gov)  
 (760) 346-7491 TEL  
 (760) 341-6820 FAX

### SANTA ANA (8)

[www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)

California Tower  
 3737 Main Street, Suite 500  
 Riverside, CA 92501-3339  
 Email: [info8@waterboards.ca.gov](mailto:info8@waterboards.ca.gov)  
 (951) 782-4130 TEL  
 (951) 781-6288 FAX

### SAN DIEGO (9)

[www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

2375 Northside Drive, Suite 100  
 San Diego, CA 92108  
 Email: [info9@waterboards.ca.gov](mailto:info9@waterboards.ca.gov)  
 (619) 516-1990 TEL  
 (619) 516-1994 FAX

★ **State Water Resources Control Board (Headquarters)**

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CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
 Matthew Rodriguez, Secretary

STATE WATER RESOURCES CONTROL BOARD  
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