



● **Board of Directors**  
***Communications and Legislation Committee***

7/13/2010 Board Meeting

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**8-10**

**Subject**

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Express support for SB 565 (Pavley, D-Agoura Hills, and Steinberg, D-Sacramento) - Water Resources

**Description**

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SB 565 (Pavley, D-Agoura Hills, and Steinberg, D-Sacramento) is intended to protect legal diversions and uses of water as well as the environment by enhancing the State Water Resources Control Board's (SWRCB) ability to identify, monitor, and enforce existing proscriptions against illegal diversions and uses of water in California. ([Attachment 1](#)).

SB 565 is similar to SB 681 (Pavley), which was one of a number of Delta-related bills that did not ultimately become part of the Delta legislative package enacted in November 2009. Last year's SB 681 was controversial because many water users feared it unduly would have expanded SWRCB's authority, for example, by allowing SWRCB to issue "interim relief orders" through relatively summary procedures; allowing SWRCB to itself initiate a stream system-wide water rights adjudication; and potentially affecting the burden of proof in certain proceedings before SWRCB. The most controversial provisions of SB 681 have not been included in SB 565. On the other hand, other provisions of SB 681 were incorporated into the Delta package, for example, the extension of existing diversion and use reporting requirements to diverters in the Delta.

SB 565 essentially builds on existing statutory authority and requirements to strengthen the ability to enforce proscriptions against illegal and unreasonable diversion and use of water. Most prominently, the bill would:

- Extend the existing legislative intent to take vigorous action to enforce water rights terms and conditions to expressly include enforcement of reporting and monitoring requirements and unreasonable diversion and use of water.
- Increase fines for violations of the Water Code, including unauthorized diversion; failure to comply with SWRCB orders; failure to file, or misstatements in, reports of diversion and use of water; and violations of monitoring and reporting requirements. At the same time, the bill expands the criteria SWRCB may consider when determining the appropriate fine to include mitigating factors, such as the violator's ability to pay, the impact on the violator's ability to continue in business and "other matters as justice may require," and directs SWRCB to establish a schedule of penalties applicable to small farms for *de minimis* water rights violations.
- Add additional authority for SWRCB to order the preparation of technical or monitoring program reports related to an investigation or proceeding involving improper use of water, and to inspect the facilities subject to the investigation or proceeding with the consent of the owner or with a duly issued warrant. The order to prepare reports may only be issued after a hearing, and costs incurred by the person required to prepare reports must bear a reasonable relationship to the need for, and benefit to be derived from, the report.
- Add a "rebuttable presumption" that in any proceeding in which it is alleged that a right to appropriate water has ceased or is subject to forfeiture, it will be presumed that the water is not being used unless it is included in a water use and diversion statement. The presumption can be rebutted by evidence that actual

use has and is occurring, or by filing the diversion statement within six months after it is required by SWRCB.

- Create a Water Rights Subaccount, in which the portion of any fines in excess of the amounts that could have been assessed prior to enactment of the bill is to be deposited "to reduce fees on water right holders, for water restoration projects and for conservancies."
- Add to the existing schedule of water rights fees assessments on persons filing a petition to change a place of use or point of diversion, a registration for small domestic use of livestock ponds, and a statement of water diversion and use.

Enactment of SB 565 will provide strong incentives for water users whose diversions and use of water impact the Delta and its watershed to comply with reasonable use, reporting, monitoring and water use requirements, and enhance SWRCB's ability to enforce those requirements. This is consistent with the Legislature's recognition in SB 7X-1 that the reasonable use and public trust policies are the foundation of water management policy, particularly with respect to the Delta, and will help attain the Delta legislative package goals of providing for a more reliable water supply and protecting, restoring, and enhancing the Delta ecosystem.

## Policy

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By Minute Items 45753, dated May 11, 2004, and 46637, dated April 11, 2006, the Board adopted a set of Delta policy principles to ensure a solid foundation for future Metropolitan positions and to provide guidance to Metropolitan staff.

By Minute Item 47135, dated May 25, 2007, the Board supported, in principle, a Delta Action Plan, as set forth in a letter signed by the General Manager.

By Minute Item 47605, dated August 19, 2008, the Board approved Delta Governance Principles as outlined in the board letter.

## California Environmental Quality Act (CEQA)

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CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

## Board Options

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### Option #1

Adopt the CEQA determination and authorize the General Manager to express Metropolitan's support for SB 565.

**Fiscal Impact:** None

**Business Analysis:** None

### Option #2

Take no position on SB 565.

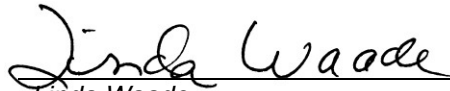
**Fiscal Impact:** None

**Business Analysis:** None

**Staff Recommendation**

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Option #1

  
Linda Waade  
Deputy General Manager, External Affairs

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6/24/2010  
Date

  
Jeffrey Nightlinger  
General Manager

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6/28/2010  
Date

**Attachment 1 – Senate Bill 565**

Ref# ea12606509

AMENDED IN ASSEMBLY MAY 20, 2010

AMENDED IN ASSEMBLY FEBRUARY 1, 2010

AMENDED IN SENATE JUNE 2, 2009

AMENDED IN SENATE MAY 4, 2009

AMENDED IN SENATE APRIL 13, 2009

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**SENATE BILL****No. 565**

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**Introduced by Senators Pavley and Steinberg**  
(Principal coauthor: Assembly Member Huffman)

February 27, 2009

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An act to amend Sections 6103.1 and 6103.4 of the Government Code, to amend Sections 1052, 1055, 1055.2, 1055.3, 1120, 1228.5, 1228.7, 1525, 1535, 1538, 1550, 1551, 1825, 1845, 5103, and 5106 of, and to add Sections 1051.1, ~~1240.5~~, 1052.5, 1826, 1846, and 1847 to, the Water Code, relating to water resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 565, as amended, Pavley. Water resources.

(1) Existing law generally prohibits the state, or a county, city, district, or other political subdivision, or any public officer or body acting in its official capacity on behalf of any of those entities, from being required to pay any fee for the performance of an official service. Existing law exempts from this provision any fee or charge for official services required pursuant to specified provisions of law relating to water use or water quality.

This bill would expand the exemption to other provisions relating to water use, including provisions that require the payment of fees to the

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State Water Resources Control Board (board) for official services relating to statements of water diversion and use.

(2) Existing law authorizes the board to investigate all streams, stream systems, lakes, or other bodies of water, take testimony relating to the rights to water or the use of water, and ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the state. Existing law requires the board to take appropriate actions to prevent waste or the unreasonable use of water. Under existing law, the board makes determinations with regard to the availability of recycled water.

This bill would authorize the board, in conducting an investigation or proceeding for these purposes, to order any person or entity that diverts water or uses water to submit any technical or monitoring report related to the diversion or use of water by that person or entity. The bill would authorize the board, in connection with the investigation or proceeding, to inspect the facilities of any person or entity to determine compliance with specified water use requirements.

(3) Existing law declares that the diversion or use of water other than as authorized by specified provisions of law is a trespass. Existing law authorizes the administrative imposition of civil liability by the board for a trespass in an amount not to exceed \$500 for each day in which the trespass occurs. Moneys generated by the imposition of civil liability under these provisions are deposited in the Water Rights Fund.

This bill would provide that a person or entity committing a trespass may be liable in an amount not to exceed the sum of \$1,000 or \$5,000 for each day in which the trespass occurs, as specified, or the highest market value of the water, as specified, whichever is the greater amount. The moneys would be required to be deposited in the Water Rights Fund, as specified. The bill would establish the Water Rights Protection Subaccount in the Water Rights Fund. Specified penalties would be required to be deposited in the subaccount. The bill would state legislative intent regarding the expenditure of the moneys in the subaccount.

(4) Existing law, with certain exceptions, requires each person who diverts water after December 31, 1965, to file with the board a prescribed statement of diversion and use. Existing law requires a statement to include specified information, including, on and after January 1, 2012, monthly records of water diversions.

This bill would establish a rebuttable presumption, as specified, in any proceeding before the board in which it is alleged that—~~an~~

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~~appropriative right~~ *a right to appropriate water* has ceased or is subject to prescribed action, that no use required to be included in a statement of diversion and use occurred unless that use is included in a statement that is submitted to the board within a specified time period.

The bill would require a person who files a statement of diversion and use, and certain petitions involving a change in a water right, to pay an annual fee, for deposit in the Water Rights Fund. The bill would include as recoverable costs, for which the board may be reimbursed from the fund upon appropriation therefor, costs incurred in connection with carrying out requirements relating to the statements of diversion and use and the performance of duties under ~~the public trust doctrine~~ and provisions that require the reasonable use of water.

(5) Existing law authorizes the board to issue a cease and desist order against a person who is violating, or threatening to violate, certain requirements, including requirements set forth in a decision or order relating to the unauthorized use of water. Any person who violates a cease and desist order may be liable in an amount not to exceed \$1,000 for each day in which the violation occurs. Revenue generated from these penalties is deposited in the Water Rights Fund.

This bill would increase, as specified, the civil penalties that apply to a person who violates a cease and desist order. The bill would impose civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for a failure to comply with various reporting or monitoring requirements, ~~including requirements imposed pursuant to the public trust doctrine~~. The bill would authorize the board to impose additional civil liability, in an amount not to exceed \$500 for each day in which a violation occurs, for the violation of a permit, license, certificate, or registration, or an order or regulation involving the unreasonable use of water. The board would be required to establish a schedule of penalties that applies to small farms for de minimus water right violations. Funds derived from the imposition of these civil penalties would be deposited in the Water Rights Fund, as specified.

~~The bill would establish, in a proceeding before the board in which it is alleged that an appropriative water right has ceased, or is subject to prescribed action, a rebuttable presumption that no use occurred on or after January 1, 2010, unless that diversion or use was included in a specified statement submitted to the board within 6 months after the statement is required to be filed with the board, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Section 6103.1 of the Government Code is  
2 amended to read:

3 6103.1. Section 6103 does not apply to any fee or charge for  
4 official services required by Part 1 (commencing with Section  
5 1000), Part 2 (commencing with Section 1200), Part 3  
6 (commencing with Section 2000), Part 4 (commencing with Section  
7 4000), Part 5 (commencing with Section 4999), or Part 5.1  
8 (commencing with Section 5100), of Division 2, Division 7  
9 (commencing with Section 13000), or Division 35 (commencing  
10 with Section 85000) of the Water Code.

11 SEC. 2. Section 6103.4 of the Government Code is amended  
12 to read:

13 6103.4. Section 6103 does not apply to any fee or charge for  
14 official services required by Section 100860 of the Health and  
15 Safety Code.

16 SEC. 3. Section 1051.1 is added to the Water Code, to read:

17 1051.1. (a) (1) In conducting any investigation or proceeding  
18 specified in Section 275 or 1051, or Article 7 (commencing with  
19 Section 13550) of Chapter 7 of Division 7, the board may order  
20 any person or entity that diverts or uses water to prepare and submit  
21 to the board any technical or monitoring program reports related  
22 to that person's or entity's diversion or use of water as the board  
23 may specify. ~~The~~

24 (2) ~~The~~ costs incurred by the person or entity in the preparation  
25 of ~~these reports~~ reports required pursuant to this subdivision shall  
26 bear a reasonable relationship to the need for the report and the  
27 benefit to be obtained from the report. ~~If~~

28 (3) If the preparation of individual reports would result in a  
29 duplication of effort, or if the reports are necessary to evaluate the  
30 cumulative effect of several diversions or uses of water, the board  
31 may order any person or entity subject to this subdivision to pay  
32 a reasonable share of the cost of preparing reports.

33 (b) Any order issued under this section shall be served by  
34 personal service or registered mail on the party required to submit  
35 technical or monitoring program reports or to pay a share of the  
36 costs of preparing reports. Unless the board issues the order after  
37 a hearing, the order shall inform the party of the right to request a  
38 hearing within 30 days after the party has been served. If the party

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1 does not request a hearing within that 30-day period, the order  
2 shall take effect as issued. If the party requests a hearing within  
3 that 30-day period, the board may adopt a decision and order after  
4 conducting a hearing.

5 (c) Upon application of any person or entity or upon its own  
6 motion, the board may review and revise any order issued pursuant  
7 to this section, in accordance with the procedures set forth in  
8 subdivision (b).

9 (d) In conducting any investigation or proceeding specified in  
10 Section 275 or 1051, or Article 7 (commencing with Section  
11 13550) of Chapter 7 of Division 7, the board may inspect the  
12 facilities of any person or entity to ascertain whether the purposes  
13 of Section 100 and this division are being met and to ascertain  
14 compliance with any permit, license, certification, registration,  
15 decision, order, or regulation issued under Section 275, this  
16 division, or Article 7 (commencing with Section 13550) of Chapter  
17 7 of Division 7. The board shall adopt regulations for procedures  
18 pursuant to Article 13 (commencing with Section 11460.10) of  
19 Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government  
20 Code, and any time extensions necessary to implement those  
21 regulations. Except in the event of an emergency affecting the  
22 public health or safety, the inspection shall be made with the  
23 consent of the owner or possessor of the facilities or, if the consent  
24 is withheld, with a warrant duly issued pursuant to the procedure  
25 set forth in Title 13 (commencing with Section 1822.50) of Part  
26 3 of the Code of Civil Procedure.

27 SEC. 4. Section 1052 of the Water Code is amended to read:

28 1052. (a) The diversion or use of water subject to this division  
29 other than as authorized in this division is a trespass.

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

36 (c) (1) Any person or entity committing a trespass as defined  
37 in this section may be liable in an amount not to exceed the greater  
38 of either of the following amounts:

39 (A) One thousand dollars (\$1,000) for each day in which the  
40 trespass occurs for the first enforcement proceeding or five



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1 thousand dollars (\$5,000) for each day in which the trespass occurs  
2 for any subsequent enforcement proceeding.

3 (B) The highest market value of the water subject to the trespass  
4 as determined ~~on a regional basis~~ pursuant to Section 1052.5.

5 (2) The Attorney General, upon request of the board, shall  
6 petition the superior court to impose, assess, and recover any sums  
7 pursuant to this subdivision. In determining the appropriate amount,  
8 the court shall take into consideration all relevant circumstances,  
9 including, but not limited to, the extent of harm caused by the  
10 violation, the nature and persistence of the violation, the length of  
11 time over which the violation occurs, and, with respect to the  
12 violator, the ability to pay, the effect on the ability to continue in  
13 business, the corrective action, if any, taken by the violator, and  
14 other matters as justice may require.

15 (3) Civil liability may be imposed by the board pursuant to  
16 Section 1055.

17 (d) (1) All funds recovered pursuant to this section shall be  
18 deposited in the Water Rights Fund established pursuant to Section  
19 1550.

20 (2) Any funds recovered pursuant to this section that exceed  
21 the amounts that were authorized before January 1, 2011, shall be  
22 deposited in the Water Rights Protection Subaccount in the Water  
23 Rights Fund established pursuant to Section 1550.

24 (e) The remedies prescribed in this section are cumulative and  
25 not alternative.

26 (f) The increase in the amount of penalties that may be imposed  
27 pursuant to the amendments made to this section by ~~this act~~ during  
28 *Senate Bill 565* of the 2009–10 Regular Session of the Legislature  
29 does not apply to violations that occurred prior to January 1, 2011.

30 *SEC. 5. Section 1052.5 is added to the Water Code, to read:*

31 *1052.5. In establishing the highest market value of water for*  
32 *purposes of Sections 1052 and 1845, the board shall consider the*  
33 *price of water transferred within the watershed where the trespass*  
34 *occurred during a period of one year immediately preceding the*  
35 *first day on which the trespass occurred, or, if there has been no*  
36 *transfer of water within the watershed during that period, the*  
37 *board shall consider the price of water transferred within the*  
38 *watershed in the most recent year in which there has been a*  
39 *transfer. Board consideration shall include only transfers of one*  
40 *year or less in duration.*

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1     ~~SEC. 5:~~

2     *SEC. 6.* Section 1055 of the Water Code is amended to read:

3     1055. (a) The executive director of the board may issue a  
4 complaint to any person or entity on which administrative civil  
5 liability may be imposed pursuant to Section 1052, Article 4  
6 (commencing with Section 1845) of Chapter 12 of Part 2 of  
7 Division 2, or Section 5107. The complaint shall allege the act or  
8 failure to act that constitutes a trespass or violation, the provision  
9 of law authorizing civil liability to be imposed, and the proposed  
10 civil liability.

11     (b) The complaint shall be served by personal notice or certified  
12 mail, and shall inform the party served that the party may request  
13 a hearing not later than 20 days from the date the party was served.  
14 The hearing shall be before the board or a member of the board in  
15 accordance with Section 183.

16     (c) The board may adopt an order setting administrative civil  
17 liability, or determining that no liability will be imposed, after any  
18 necessary hearing.

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

22     ~~SEC. 6:~~

23     *SEC. 7.* Section 1055.2 of the Water Code is amended to read:

24     1055.2. ~~No person or entity shall~~ *A person or entity shall not*  
25 be subject to both civil liability imposed under Section 1055 and  
26 civil liability imposed by the superior court under Section 1052,  
27 1845, or 1846 for the same act or failure to act.

28     ~~SEC. 7:~~

29     *SEC. 8.* Section 1055.3 of the Water Code is amended to read:

30     1055.3. In determining the amount of civil liability, the board  
31 shall take into consideration all relevant circumstances, including,  
32 but not limited to, the extent of harm caused by the violation, the  
33 nature and persistence of the violation, the length of time over  
34 which the violation occurs, and with respect to the violator, the  
35 ability to pay, the effect on the ability to continue in business, the  
36 corrective action, if any, taken by the violator, and other matters  
37 as justice may require.

38     ~~SEC. 8:~~

39     *SEC. 9.* Section 1120 of the Water Code is amended to read:

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1 1120. This chapter applies to any decision or order issued under  
2 this part or Section 275, Part 2 (commencing with Section 1200),  
3 Part 2 (commencing with Section 10500) of Division 6, Article 7  
4 (commencing with Section 13550) of Chapter 7 of Division 7,  
5 Section 85230, or the public trust doctrine.

6 ~~SEC. 9.~~

7 *SEC. 10.* Section 1228.5 of the Water Code is amended to read:

8 1228.5. (a) Registration of a small domestic or livestock  
9 stockpond use pursuant to this article shall be renewed prior to the  
10 expiration of each five-year period following completed  
11 registration.

12 (b) Renewal of registration shall be made upon a form prescribed  
13 by the board and shall contain ~~such a~~ report of water use made  
14 pursuant to the registration as may be required by the board.

15 (c) The conditions established by the board pursuant to Section  
16 1228.6 ~~which that~~ are in effect at the time of renewal of registration  
17 shall supersede the conditions ~~which that~~ were applicable to the  
18 original completed registration.

19 (d) Failure to renew registration in substantial compliance with  
20 the reporting requirements prescribed by the board within the time  
21 period specified in subdivision (a), or to pay the renewal fee  
22 specified in subdivision (b) of Section 1525, shall result by  
23 operation of law in the revocation of any right acquired pursuant  
24 to this article.

25 ~~SEC. 10.~~

26 *SEC. 11.* Section 1228.7 of the Water Code is amended to read:

27 1228.7. (a) Any registrant may change the point of diversion  
28 or place of use by delivering to the board an amended registration  
29 form in accordance with Section 1228.3, including payment of the  
30 registration fee specified in Section 1525, except that the purpose  
31 of the use may not be changed and the change may not operate to  
32 the injury of any legal user of the water involved.

33 (b) Any completed amended registration of water use continues  
34 in effect the priority of right as of the date of the original completed  
35 registration.

36 (c) All provisions of this article regarding appropriations made  
37 pursuant thereto, including, but not limited to, provisions regarding  
38 enforcement, are applicable to the appropriation as described in  
39 the completed amended registration, except that the conditions  
40 established by the board pursuant to Section 1228.6 which are in

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1 effect at the time of completion of the amended registration shall  
2 supersede the conditions which were applicable to the original  
3 completed registration.

4 ~~SEC. 11. Section 1240.5 is added to the Water Code, to read:~~

5 ~~1240.5. (a) In any proceeding before the board in which it is~~  
6 ~~alleged that a right to appropriate water has ceased or is subject to~~  
7 ~~forfeiture or revocation for nonuse, there shall be a rebuttable~~  
8 ~~presumption that no use occurred unless that use is included in a~~  
9 ~~statement submitted pursuant to any reporting or monitoring~~  
10 ~~requirement established under any permit, license, certificate,~~  
11 ~~registration, decision or order, or regulation issued by the board~~  
12 ~~pursuant to this division, Section 275, Article 7 (commencing with~~  
13 ~~Section 13550) of Division 7, or the public trust doctrine under~~  
14 ~~this part, and the statement is submitted within six months after it~~  
15 ~~is required to be filed with the board. This section does not apply~~  
16 ~~to any diversion or use that occurred before January 1, 2010.~~

17 ~~(b) The rebuttable presumption established in subdivision (a)~~  
18 ~~applies only if the failure to file the statement is shown to be~~  
19 ~~willful.~~

20 SEC. 12. Section 1525 of the Water Code is amended to read:

21 1525. (a) Each person or entity who holds a permit or license  
22 to appropriate water, and each lessor of water leased under Chapter  
23 1.5 (commencing with Section 1020) of Part 1, shall pay an annual  
24 fee according to a fee schedule established by the board.

25 (b) Each person or entity who files any of the following shall  
26 pay a fee according to a fee schedule established by the board:

27 (1) An application for a permit to appropriate water.

28 (2) A registration of appropriation for a small domestic use or  
29 livestock stockpond use.

30 (3) A petition for an extension of time within which to begin  
31 construction, to complete construction, or to apply the water to  
32 full beneficial use under a permit.

33 (4) A petition to change the point of diversion, place of use, or  
34 purpose of use, under a registration for small domestic use or  
35 livestock stockpond use, or under a permit or license.

36 (5) A petition to change the conditions of a permit or license,  
37 requested by the permittee or licensee, that is not otherwise subject  
38 to paragraph (3) or (4).

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1 (6) A petition under Section 1707 or 1740 to change the point  
2 of diversion, place of use, or purpose of use of a water right that  
3 is not subject to a permit or license to appropriate water.

4 (7) A petition to change the point of discharge, place of use, or  
5 purpose of use, of treated wastewater, requested pursuant to Section  
6 1211.

7 (8) An application for approval of a water lease agreement.

8 (9) A request for release from priority pursuant to Section 10504.

9 (10) An application for an assignment of a state-filed application  
10 pursuant to Section 10504.

11 (11) A statement of water diversion and use pursuant to Part  
12 5.1 (commencing with Section 5100).

13 (c) The board shall set the fee schedule authorized by this section  
14 so that the total amount of fees collected pursuant to this section  
15 equals that amount necessary to recover costs incurred in  
16 connection with the issuance, administration, review, monitoring,  
17 and enforcement of permits, licenses, certificates, and registrations  
18 to appropriate water, water leases, statements of diversion and use,  
19 and orders approving changes in point of discharge, place of use,  
20 or purpose of use of treated wastewater. The board may include,  
21 as recoverable costs, but is not limited to including, the costs  
22 incurred in reviewing applications, registrations, statements of  
23 diversion and use, petitions and requests, prescribing terms of  
24 permits, licenses, registrations, and change orders, enforcing and  
25 evaluating compliance with permits, licenses, certificates,  
26 registrations, change orders, and water leases, inspection,  
27 monitoring, planning, modeling, reviewing documents prepared  
28 for the purpose of regulating the diversion and use of water,  
29 applying and enforcing the public trust doctrine, Section 275, the  
30 prohibition set forth in Section 1052 against the unauthorized  
31 diversion or use of water subject to this division, the requirements  
32 under Part 5.1 (commencing with Section 5100) for filing  
33 statements of diversion and use, and the administrative costs  
34 incurred in connection with carrying out these actions.

35 (d) (1) The board shall adopt the schedule of fees authorized  
36 under this section as emergency regulations in accordance with  
37 Section 1530.

38 (2) For filings subject to subdivision (b), the schedule may  
39 provide for a single filing fee or for an initial filing fee followed  
40 by an annual fee, as appropriate to the type of filing involved, and

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1 may include supplemental fees for filings that have already been  
2 made but have not yet been acted upon by the board at the time  
3 the schedule of fees takes effect.

4 (3) The board shall set the amount of total revenue collected  
5 each year through the fees authorized by this section at an amount  
6 equal to the revenue levels set forth in the annual Budget Act for  
7 this activity. The board shall review and revise the fees each fiscal  
8 year as necessary to conform with the revenue levels set forth in  
9 the annual Budget Act. If the board determines that the revenue  
10 collected during the preceding year was greater than, or less than,  
11 the revenue levels set forth in the annual Budget Act, the board  
12 may further adjust the annual fees to compensate for the over or  
13 under collection of revenue.

14 (e) Annual fees imposed pursuant to this section for the 2003–04  
15 fiscal year shall be assessed for the entire 2003–04 fiscal year.

16 (f) Fees imposed on holders of riparian water rights or rights to  
17 water appropriated prior to December 19, 1914, pursuant to this  
18 chapter shall bear a fair or reasonable relationship to the payor's  
19 burden on, or benefits from, the board's water rights program  
20 funded by those fees.

21 SEC. 13. Section 1535 of the Water Code is amended to read:

22 1535. (a) Any fee subject to this chapter that is required in  
23 connection with the filing of an application, registration, request,  
24 statement, or proof of claim, other than an annual fee required after  
25 the period covered by the initial filing fee, shall be paid to the  
26 board.

27 (b) If a fee established under subdivision (b) of Section 1525,  
28 Section 1528, or Section 13160.1 is not paid when due, the board  
29 may cancel the application, registration, petition, request, statement,  
30 or claim, or may refer the matter to the State Board of Equalization  
31 for collection of the unpaid fee.

32 SEC. 14. Section 1538 of the Water Code is amended to read:

33 1538. (a) In any proceeding pursuant to Section 1052 in which  
34 it is determined that there has been a violation of the prohibition  
35 against the unauthorized diversion or use of water subject to this  
36 division, the board or court, as the case may be, may impose an  
37 additional liability in the amount of 150 percent of any annual fees  
38 that would have been required under this division if the diversion  
39 or use had been authorized by a permit or license to appropriate  
40 water.

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1 (b) In any proceeding pursuant to Section 5107 in which the  
2 board imposes liability for a failure to file a statement of diversion  
3 and use or for a material misstatement in a statement of diversion  
4 and use, the board may impose an additional liability in the amount  
5 of 150 percent of any fees that have not been paid but would have  
6 been required under this division if the statement of diversion and  
7 use had been filed and did not make any material misstatement.

8 (c) The additional liability imposed under this section may  
9 include interest, at the rate provided under Section 685.010 of the  
10 Code of Civil Procedure, from the dates the annual fees would  
11 have been assessed.

12 SEC. 15. Section 1550 of the Water Code is amended to read:

13 1550. (a) There is in the State Treasury a Water Rights Fund,  
14 which is hereby established.

15 (b) There is hereby established the Water Rights Protection  
16 Subaccount in the Water Rights Fund. It is the intent of the  
17 Legislature that the moneys in the Water Rights Protection  
18 Subaccount be available for expenditure, upon appropriation by  
19 the Legislature, to reduce fees on water right holders, for water  
20 restoration projects, ~~conservancies, and for General Fund purposes.~~  
21 *and conservancies.*

22 SEC. 16. Section 1551 of the Water Code is amended to read:

23 1551. All of the following shall be deposited in the Water  
24 Rights Fund:

25 (a) All fees, expenses, and penalties collected by the board or  
26 the State Board of Equalization under this chapter and Part 3  
27 (commencing with Section 2000).

28 (b) All funds collected under Section 1052, Article 4  
29 (commencing with Section 1845) of Chapter 12, and Section 5107.

30 (c) All fees collected under Section 13160.1 in connection with  
31 certificates for activities involving hydroelectric power projects  
32 subject to licensing by the Federal Energy Regulatory Commission.

33 SEC. 17. Section 1825 of the Water Code is amended to read:

34 1825. It is the intent of the Legislature that the state should  
35 take vigorous action to enforce the terms and conditions of permits,  
36 licenses, certifications, and registrations to appropriate water, to  
37 enforce state board orders and decisions, to prevent the unlawful  
38 diversion of water, and to prevent the waste, unreasonable use,  
39 unreasonable method of use, or unreasonable method of diversion,  
40 of water, and to enforce reporting and monitoring requirements.

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1 SEC. 18. Section 1826 is added to the Water Code, to read:

2 1826. The board shall establish a schedule of penalties that  
3 applies to small farms for de minimis water right violations under  
4 this division.

5 SEC. 19. Section 1845 of the Water Code is amended to read:

6 1845. (a) Upon the failure of any person to comply with a  
7 cease and desist order issued by the board pursuant to this chapter,  
8 the Attorney General, upon the request of the board, shall petition  
9 the superior court for the issuance of prohibitory or mandatory  
10 injunctive relief as appropriate, including a temporary restraining  
11 order, preliminary injunction, or permanent injunction.

12 (b) (1) Any person or entity who violates a cease and desist  
13 order issued pursuant to this chapter may be liable in an amount  
14 not to exceed the greater of either of the following amounts:

15 (A) One thousand dollars (\$1,000) for each day in which the  
16 violation occurs for the first enforcement proceeding or five  
17 thousand dollars (\$5,000) for each day in which the violation  
18 occurs for any subsequent enforcement proceeding.

19 (B) The highest market value of the water as determined ~~on a~~  
20 ~~regional basis pursuant to Section 1052.5.~~

21 (2) Civil liability may be imposed by the superior court. The  
22 Attorney General, upon the request of the board, shall petition the  
23 superior court to impose, assess, and recover those sums.

24 (3) Civil liability may be imposed administratively by the board  
25 pursuant to Section 1055.

26 (c) In determining the appropriate amount, the court, or the  
27 board, as the case may be, shall take into consideration all relevant  
28 circumstances, including, but not limited to, the extent of harm  
29 caused by the violation, the nature and persistence of the violation,  
30 the length of time over which the violation occurs, and, with respect  
31 to the violator, the ability to pay, the effect on the ability to  
32 continue in business, the corrective action, if any, taken by the  
33 violator, and other matters as justice may require.

34 (d) (1) All funds recovered pursuant to this section shall be  
35 deposited in the Water Rights Fund established pursuant to Section  
36 1550.

37 (2) Any funds recovered pursuant to this section that exceed  
38 the amounts that were authorized before January 1, 2011, shall be  
39 deposited in the Water Rights Protection Subaccount in the Water  
40 Rights ~~Funds~~ *Fund* established pursuant to Section 1550.



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1 (e) The increase in the amount of penalties that may be imposed  
2 pursuant to the amendments made to this section by ~~this act during~~  
3 *Senate Bill 565* of the 2009–10 Regular Session of the Legislature  
4 does not apply to violations that occurred prior to January 1, 2011.

5 SEC. 20. Section 1846 is added to the Water Code, to read:

6 1846. (a) Any person or entity subject to a monitoring or  
7 reporting requirement specified in subdivision (f) who violates  
8 that reporting or monitoring requirement, makes a material  
9 misstatement in any record or report submitted under that reporting  
10 or monitoring requirement, or tampers with or renders inaccurate  
11 any monitoring device required under that reporting or monitoring  
12 requirement shall be liable for a sum not to exceed five hundred  
13 dollars (\$500) for each day in which the violation occurs.

14 (b) Civil liability may be imposed by the superior court. The  
15 Attorney General, upon the request of the board, shall petition the  
16 superior court to impose, assess, and recover those sums.

17 (c) Civil liability may be imposed administratively by the board  
18 pursuant to Section 1055.

19 (d) In determining the appropriate amount, the court, or the  
20 board, as the case may be, shall take into consideration all relevant  
21 circumstances, including, but not limited to, the extent of harm  
22 caused by the violation, the nature and persistence of the violation,  
23 the length of time over which the violation occurs, and, with respect  
24 to the violator, the ability to pay, the effect on the ability to  
25 continue in business, the corrective action, if any, taken by the  
26 violator, and other matters as justice may require.

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

30 (f) (1) This section applies to any reporting or monitoring  
31 requirement established under any permit, license, certificate,  
32 registration, decision or order, or regulation issued by the board  
33 pursuant to this division, Section 275, *or* Article 7 (commencing  
34 with Section 13550) of Division 7, ~~or the public trust doctrine.~~

35 (2) This section also applies to any reporting or monitoring  
36 requirement established by the department under Section 275, if  
37 the department requests enforcement pursuant to this section.

38 (3) This section does not provide a basis for imposing liability  
39 on a watermaster who is subject to reporting or monitoring

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1 requirements but does not divert or use the water subject to those  
2 requirements.

3 SEC. 21. Section 1847 is added to the Water Code, to read:

4 1847. (a) Any person or entity who violates any term or  
5 condition of a permit, license, certificate, or registration issued  
6 under this division or any order or regulation adopted by the board  
7 under Section 275 may be liable in an amount not to exceed five  
8 hundred dollars (\$500) for each day in which the violation occurs.

9 (b) Civil liability may be imposed by the superior court. The  
10 Attorney General, upon the request of the board, shall petition the  
11 superior court to impose, assess, and recover those sums.

12 (c) Civil liability may be imposed administratively by the board  
13 pursuant to Section 1055.

14 (d) In determining the appropriate amount, the court, or the  
15 board, as the case may be, shall take into consideration all relevant  
16 circumstances, including, but not limited to, the extent of harm  
17 caused by the violation, the nature and persistence of the violation,  
18 the length of time over which the violation occurs, and, with respect  
19 to the violator, the ability to pay, the effect on the ability to  
20 continue in business, the corrective action, if any, taken by the  
21 violator, and other matters as justice may require.

22 (e) No liability shall be recoverable under this section for any  
23 violation for which liability is recovered under Section 1052 or  
24 1846.

25 (f) All funds recovered pursuant to this section shall be deposited  
26 in the Water Rights Protection Subaccount in the Water Rights  
27 Fund established pursuant to Section 1550.

28 SEC. 22. Section 5103 of the Water Code, ~~as amended by~~  
29 ~~Section 5 of Chapter 2 of the Seventh Extraordinary Session of~~  
30 ~~the Statutes of 2009~~, is amended to read:

31 5103. Each statement shall be prepared on a form provided by  
32 the board. The statement shall include all of the following  
33 information:

34 (a) The name and address of the person who diverted water and  
35 of the person filing the statement.

36 (b) The name of the stream or other source from which water  
37 was diverted, and the name of the next major stream or other body  
38 of water to which the source is tributary.

39 (c) The place of diversion. The location of the diversion works  
40 shall be depicted on a specific United States Geological Survey

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1 topographic map, or shall be identified using the California  
2 Coordinate System, or latitude and longitude measurements. If  
3 assigned, the public land description to the nearest 40-acre  
4 subdivision and the assessor's parcel number shall also be provided.

5 (d) The capacity of the diversion works and of the storage  
6 reservoir, if any, and the months in which water was used during  
7 the preceding calendar year.

8 (e) (1) On and after January 1, 2012, monthly records of water  
9 diversions. The measurements of the diversion shall be made using  
10 best available technologies and best professional practices. Nothing  
11 in this paragraph shall be construed to require the implementation  
12 of technologies or practices by a person who provides to the board  
13 documentation demonstrating that the implementation of those  
14 practices is not locally cost effective.

15 (2) (A) The terms of, and eligibility for, any grant or loan  
16 awarded or administered by the department, the board, or the  
17 California Bay-Delta Authority, or its successor on behalf of a  
18 person that is subject to paragraph (1) shall be conditioned on  
19 compliance with that paragraph.

20 (B) Notwithstanding subparagraph (A), the board may determine  
21 that a person is eligible for a grant or loan even though the person  
22 is not complying with paragraph (1), if both of the following apply:

23 (i) The board determines that the grant or loan will assist the  
24 grantee or loan recipient in complying with paragraph (1).

25 (ii) The person has submitted to the board a one-year schedule  
26 for complying with paragraph (1).

27 (C) It is the intent of the Legislature that the requirements of  
28 this subdivision shall complement and not affect the scope of  
29 authority granted to the board by provisions of law other than this  
30 article.

31 (f) The purpose of use.

32 (g) A general description of the area in which the water was  
33 used. The location of the place of use shall be depicted on a specific  
34 United States Geological Survey topographic map and on any other  
35 maps with identifiable landmarks. If assigned, the public land  
36 description to the nearest 40-acre subdivision and the assessor's  
37 parcel number shall also be provided.

38 (h) The year in which the diversion was commenced as near as  
39 is known.

40 SEC. 23. Section 5106 of the Water Code is amended to read:

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1 5106. (a) Neither the statements submitted under this part nor  
2 the determination of facts by the board pursuant to Section 5105  
3 shall establish or constitute evidence of a right to divert or use  
4 water.

5 (b) (1) The board may rely on the names and addresses included  
6 in statements submitted under this part for the purpose of  
7 determining the names and addresses of persons who are to receive  
8 notices with regard to proceedings before the board.

9 (2) Notwithstanding paragraph (1), any person may submit, in  
10 writing, a request to the board to provide notification to a different  
11 address, and the board shall provide the notification to that address.

12 (3) If the board provides notice to persons who file statements  
13 under this part, the notice shall not be determined to be inadequate  
14 on the basis that notice was not received by a person, other than a  
15 party to whom the board's action is directed, who fails to file a  
16 statement required to be filed under this part.

17 (4) This subdivision does not affect the requirement in Section  
18 2527 to provide notice to all persons who own land that appears  
19 to be riparian to the stream system.

20 (c) In any proceeding before the board to determine whether an  
21 application for a permit to appropriate water should be approved,  
22 any statement submitted under this part or determination by the  
23 board pursuant to Section 5105 is evidence of the facts stated  
24 therein.

25 (d) (1) In any proceeding before the board in which it is alleged  
26 that ~~an appropriative right~~ *a right to appropriate water* has ceased  
27 or is subject to forfeiture for nonuse ~~because water has not been~~  
28 ~~put to beneficial use~~, there shall be a rebuttable presumption that  
29 no use required to be included in a statement submitted under this  
30 part occurred unless that use is included in a statement submitted  
31 under this part and that the statement is submitted within six  
32 months after it is required to be filed with the board.

33 (2) Paragraph (1) does not apply to any use that occurred before  
34 January 1, 2010.

35 ~~(3) The rebuttable presumption established in paragraph (1)~~  
36 ~~applies only if the failure to file the statement is shown to be~~  
37 ~~willful.~~

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CORRECTIONS:  
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